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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 31.

SUPREME COURT U.S. STATE LIBRARY

WILLIAM J. CORBETT, PLAINTIFF IN ERROR,

vs.

MICHAEL CRAVEN.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

FILED DECEMBER 3, 1907.

(20,918.)

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INDEX.

	Original.	Print.
Writ	1	1
Officer's return	2	1
Declaration	3	2
Schedule of goods and chattels	3	2
Answer	7	6
Order appointing auditor, &c.	7	6
Motion to amend declaration	8	7
Motion for special precept	10	9
Special precept	12	9
Officer's return	13	10
Motion to amend answer	15	12
Answer of trustee	17	13
Auditor's report	18	13
Exhibit A—Record in case of Nathan P. Avery, trustee, *vs.* Michael Craven	43	35
Bill to set aside conveyance	43	36
Answer	46	38
Replication	47	39
Master's report	47	39
Schedule B—List of goods and chattels	52	43
Schedule C—List of goods and chattels	55	45
Withdrawal of appearance by Charles H. Beckwith	56	46

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	Original.	Print.
Appearance by Charles H. Beckwith	56	46
Verdict	57	47
Defendant's bill of exceptions	58	47
Statement	58	47
Bill of sale, October 12, 1883	59	48
Bill of sale, April 6, 1885	59	48
Bill of sale, March 10, 1891	60	48
Agreed facts	61	49
Defendant's requests	61	50
Allowance of bill of exceptions	62	50
Exhibit A—Record in case of Nathan P. Avery, trustee, *vs.* Michael Craven	62	50
Bill to set aside conveyance	63	51
Answer	65	53
Replication	66	54
Master's report	66	54
Rescript	70	57
Brief statement of grounds of decision	71	58
Withdrawal of appearance by Charles H. Beckwith	71	58
Motion to amend declaration	71	58
Replication	72	59
Motion to amend replication	75	60
Agreed statement	76	61
Verdict and judgment	78	62
Motion to vacate judgment	78	63
Plaintiff's bill of exceptions	79	63
Statement	79	63
Bill of sale, October 12, 1883	80	64
Bill of sale, April 6, 1885	80	64
Bill of sale, March 10, 1891	81	65
Agreed facts	82	65
Finding of auditor	82	66
Motion for leave to amend declaration	83	66
Allowance of bill of exceptions	84	67
Rescript	85	68
Brief statement of grounds of decision	85	68
Withdrawal of appearance by Walter S. Robinson	86	68
Appearance by Walter S. Robinson	86	69
Judgment	86	69
Docket entries	87	69
Clerk's certificate	87	70
Petition for writ of error	88	70
Allowance of writ of error	89	70
Assignment of errors	89	71
Bond on writ of error	92	72
Docket entries	93	73
Clerk's certificate	93	73
Opinion of supreme judicial court, October 16, 1906	95	73
Opinion of supreme judicial court, October 15, 1907	99	75
Writ of error	105	78
Return on writ of error	106	79
Citation	107	79
Marshal's return	108	80

1 COMMONWEALTH OF MASSACHUSETTS,

Hampden, ss:

I, Robert O. Morris, Clerk of the Superior Court of said Commonwealth of Massachusetts, for the County of Hampden, do hereby certify that among the files and records of said Superior Court for the said County of Hampden, in the case of William J. Corbett *vs.* Michael Craven it is thus contained.

Writ.

COMMONWEALTH OF MASSACHUSETTS,

Hampden, ss:

[L. S.]

To the Sheriffs of our Several Counties or their Deputies, Greeting:

We command you to attach the goods or estate of Michael Craven of Springfield, in said County, to the value of ten thousand dollars, and to summon the said defendant (if he may be found in your precinct,) to appear before our Justices of our Superior Court, at our Clerk's Office at Springfield, within our said County of Hampden, on the first Monday of May next; then and there in our said Court to answer unto William J. Corbett of Boston in our County of Suffolk, in an action of tort to the damage of the said plaintiff (as he say-) the sum of Ten Thousaad Dollars, which shall then and there be made to appear, with other due damages. And have you there this Writ, with your doings therein.

2 Witness, John A. Aiken, Esquire, at Springfield, the twenty-eighth day of Mareh in the year of our Lord one thousand nine hundred and five.

ROBERT O. MORRIS, *Clerk.*

Upon which writ is the following return by the officer who served the same.

Officer's Return.

HAMPDEN, *ss:*

APRIL 10, A. D. 1905.

By virtue of this Writ, I this day at 5 minutes past 7 o'clock in the forenoon attached as the property of the within-named defendant, all his right, title and interest in and to any real estate in the County of Hampden, and on the same day deposited an attested copy of this Writ, without the declaration and of so much of my return as relates to the attachment of real estate, in the office of the Register of Deeds for said County, and afterwards on the same 10th day of said April, attached as the property of said defendant, one Cop Winder and one Steam Chest; and afterwards on the 11 day of April, A. D. 1905 gave in hand to said defendant, a summons for his appearance at Court as within directed.

S. T. MILLER.
Deputy Sheriff.

Fees.

Attachment	1.00
Service	.50
Travel	1.00
Copy	.50
Paid Register	.25
	$3.25

At a return day of said Court, to wit, the first day of May, in the year nineteen hundred and five, the plaintiff appeared by his
3 attorney, C. T. Callahan, and entered the above action, and filed his declaration in the case, which is in the words as follows:

Declaration.

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

Superior Court.

First Monday of May, 1905.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

Plaintiff's Declaration.

And the plaintiff says the defendant has converted to his own use goods and chattels described in the schedule hereto annexed. And the plaintiff says said goods and chattels were in certain buildings and upon certain premises in Holyoke, in said County, occupied by James Connor, doing business as Connor Brothers, said buildings and premises being known as the New York Mill; and that the rooms and buildings mentioned in said schedule were in said building and upon said premises.

By His Attorney, C. T. CALLAHAN.

The plaintiff hereby demands a trial by jury.

Machine Shop.

1. 1 lathe 16 in. swing, 8½ ft. between centers.
2. 1 lathe 16 in. swing, 8½ ft. between centers.
3. 1 upright drill (Baush).
4. 20 flat and twist drills.
5. 4 tons estimated of finished castings, duplicate parts of various kinds of woolen machines.
6. 7 tons estimated unfinished castings, duplicate parts of various kinds of woolen machines.
7. Shafting 10 ft. long and 2 in. in diameter.
8. Wooden pulley 8 in. face 28 in. diameter.

4

9. 1 wooden pulley in archway, 8 in. face 24 in. diameter.
10. 1 shaft 8 ft. long, 2⅜ in. diameter, 2 iron flanges.
11. 1 shaft 8 ft. long 2 in. in *id*ameter.
12. 1 iron flange pulley 10 in. face, 10 in. diameter.
13. 1 ceiling bracket 2⅜ in. bore and 3 iron braces.
14. 1 wooden pulley 24 in. diameter, 8 in. face.
15. 1 6 in. double belt 14 ft. long.
16. 1 shaft 9 ft. long with tight and loose pulley 7 in. face, 8 in. dia.
17. 1 shaft 22 ft. long.
18. 1 48 in. fan.
19. 1 14 in. drop hanger for fan shaft in old dye house.
20. 2 pedestal boxes for fan shaft.
21. 2 16 in. drop hangers.
22. 1 single belt 40 ft. 9 in. long 6 in. wide.
23. 1 48 in. fan.

Narrow Weave Room.

24. 144 ft. full row cold rolled shafting 1⅞ in. in diameter.
25. 32 wooden pulleys with set of flanges 14 in. diameter 12 in. face.
26. 4 wooden pulleys 8 in. face 16 in. diameter.
27. 1 iron pulley 8 in. face 16 in. diameter.
28. Cold rolled shafting 10 ft. long by 1 7/16.
29. 1 wooden pulley 12 in. diameter and 2 pedestal boxes.
30. 4 wooden driving pulleys 28 in. diameter 6 in. face.
31. 18-8 in. drop hangers.
32. 1 belt 28 ft. long 6 in. wide.
33. 1 belt 28 ft. long 6 in. wide.
34. 3 wall boxes for shafting.
35. 1 double main driving belt 26 ft. long 6 in. wide.
36. 228 ft. ¼ in. gas pipe.
37. 50 ft. 1¼ in. gas pipe.
38. 40¼ in. gas cocks.
39. 1 1¼ in. gas cocks.
40. 1 1½ steam valve (Jenks).
41. 228 ft. 1 in. steam pipe and 3 large headers.
42. Measuring reel complete and 2 6 ft. long and ½ in. thick iron braces.

Old Dye House.

43. 1 speck dye machine complete.
44. 1 Bausch friction pulley 30 in. diameter 8 in. face.
45. 1 rubber driving belt 23 ft. 10½ in. long, 8 in. wide 6 ply.
46. 1 wooden driving pulley 24 in. diameter 8 in. face.
47. 3 2½ in. Chapman valve-.
48. 1 shaft 38 ft. long by 2¾.

49. 1 iron pulley 30 in. diameter 12 in. face.
50. 1 rubber belt 9 ft. 3 in. long, 3 in. wide.
51. 2 reels 2¾ ft. diameter 5 ft. 7½ in. long.

New Dye House.

52. 1 large dye tub and reel.
53. 1 rubber driving belt 17 ft. 10 in. long 6 in. wide.
54. 1 shafting 40 ft. long 2⅜ — diameter.
55. 5 hangers 12 in. drop.
56. 1 pedestal box.
57. 1 wooden pulley 14 in. diameter 10 in. face.
58. 1 wooden pulley 14 in. diameter 10 in. face.
59. 1 counter belt 29 ft. 2½ in. long, 10 in. wide.
60. Water pipe 24 ft. long 2½ in. diameter.
61. 2 2½ in. Chapman iron gate valves.
62. 30 ft. 1½ in. steam pipe and 2 1½ in. Jenks Globe Valves.
63. 25 ft. ⅜ in. gas pipes and 3 gas cocks.
64. 1 dye tub and reel, 4 ft. long, 3 ft. wide.

Finishing Room.

65. 1 cloth washer complete.
66. 1 4 in. Chapman iron gate valve.
67. 2 2½ in. Chapman gate valves.
68. 1 counter shaft 10 ft. 2 in. long, 2 in. diameter.
69. 2 12 in. drop hangers.
70. 1 16 in. wooden pulley 10 in. face.
71. 2½ water pipe, 8 ft. 4 in. long.
72. 1 centrifugal pump complete.
73. 16 ft. 6 in. wrought iron suction pipe.
74. 10 ft. 5 in. delivery pipe.
75. 1 counter shaft 12 ft. long, 2⅜ in. diameter.
76. 1 iron clamp pulley 36 in. diameter 10 in. face.
77. 1 6 ply rubber belt 21 ft. 10 in. long, 10 in. wide.
78. 1 double leather belt 21 ft. 10 in. long, 10 in. wide.
79. 1 wooden pulley 10 in. face, 16 in. diameter.
80. 1 wooden pulley 10 in. face 16 in. diameter.
81. 1 iron tank, 4 ft. long, 30 in. high and 30 in. wide.
82. [160 slats about 5 ft. long 4 in. wide.]*
83. 198 ft. 2 in. steam pipe.
84. 1 2 in. Jenks globe valve, brass.
85. 80 ft. 2 in. water pipe and 1 2 in. Chapman gate valve, brass.
86. 50 ft. 1¼ steam pipe.
87. [1¼ double valve Jenks, brass.]*
88. 2 fulling mills.
89. 40 ft. 4 in. double leather belt.

[* Words and figures enclosed in brackets erased in copy.]

6

90. 2 20 in. iron pulleys 10 in. face.
91. 1 automatic measuring machine.
92. 1 cloth folder.
93. 10 wooden pulleys, 8 in. face.
94. [30 ft. 2½ in. single leather belting.]*
95. [Main driving double leather belt, 68 ft. long, 16 in. wide.]*
96. 3 sets of brushes for gigs.

Dryer Room.

97. 4 36 in. fans.
98. 1 shaft 22 ft. long, 2⅞ in. diameter.
99. 1 clamp iron pulley 24 in. diameter 12 in. face.
100. 1 wooden pulley 18 in. diameter, 10 in. face.
101. 1 belt 34 ft. 9 in. long, 10 in. wide.
102. 1 leather belt single 20 ft. 4 in. long, 6 in. wide.
103. 2 iron pulleys 12 in. diameter, 2 in. face.
104. 1 pulley 14 in. diameter 10 in. face iron.
105. 4 iron pulleys 24 in. diameter 4 in. face.
106. 48 ft. 3 in. double belt.

Card Room.

107. 22 wooden pulleys 14 in. diameter 10 in. face.
108. 3 sets Barker rub rolls.
109. 11 wooden pulleys 10 in. diameter, 10 in. face.

Dressing Room.

110. 1 Cleveland dresser reel.
111. 1 beamer head.
112. 1 shafting 16 ft. long, 2⅞ in. diameter.
113. [8 iron bars 8 ft. long, ¾ in. wide, ¾ in. thick.]*
114. [60 steel spindles and fixtures of dresser reel.]*
115. 1 wooden pulley 24 in. diameter, 6 in. face.
116. 1 wooden pulley 16 in. diameter 4 in. face.
117. 1 single leather belt 28 ft. long 6 in. wide.
118. [1 double leather belt 14 ft. long 3 in. wide.]*
119. [1 double leather belt 14 ft. long 3 in. wide.]*

7 And within ten days from the return day of said writ the defendant appeared by his attorney, C. H. Beckwith, and on the thirty-first day of May, nineteen hundred and five, filed his answer, which is in the words as follows:

[* Words and figures enclosed in brackets erased in copy.]

Answer.

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

Superior Court.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

Defendant's Answer.

And the defendant denies each and every material allegation in the plaintiff's writ and declaration contained.

By His Attorney, CHARLES H. BECKWITH.

And at the June Sitting, nineteen hundred and five, the case was referred to James L. Doherty, Auditor, and a rule issued, which is in the words as follows:

Rule.

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

Superior Court, June Sitting, 1905.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

And now it is ordered by the Court that James L. Doherty, Esquire, be, and he hereby, is, appointed Auditor in the above-mentioned action, to hear the parties, to examine their vouchers and evidence, to state the accounts, and make report thereof to the Court.

Said Auditor may appoint a day certain for the trial thereof
8 before him, and if such order be made the trial shall be had upon the day appointed and shall proceed unless the parties otherwise agree, or the Auditor otherwise orders, (from day to day until the conclusion thereof. If either party neglects to appear at the time appointed for such trial or at any adjournment thereof without good cause, or if at such trial either party shall wilfully refuse to produce in good faith the testimony relied upon by him, the Auditor may report such neglect or refusal to the Court for such action by the Court thereon as the case may require.

If during the progress of said trial it becomes necessary for any further orders by the Court for the purpose of expediting the case, the Auditor after hearing the parties shall report to the Court what

action, if any, he deems necessary, and the Court will make such further orders as the case may require.

June 20, 1905.

ROBERT O. MORRIS, *Clerk.*

On the thirtieth day of September, nineteen hundred and five, the plaintiff filed a motion to amend his declaration, which is in the words as follows:

Motion to Amend Declaration.

COMMONWEALTH OF MASSACHUSETTS.
Hampden, ss:

Superior Court.

First Monday of May, 1905.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

Plaintiff's Motion to Amend Declaration.

And now comes the plaintiff and moves for leave to amend
9 his declaration by striking out all of the same, excepting the schedule therein mentioned, and by inserting in place thereof the following:

And the plaintiff says the defendant has converted to his own use goods and chattels described in the schedule hereto annexed.

And the plaintiff says said goods and chattels were in certain buildings and upon certain premises in Holyoke, in said County, formerly occupied by James Connor, doing business as Connor Brothers, said buildings and premises consisting of two plants known respectively as the New York Mill and the Bigelow Street Mill; that the rooms mentioned in said schedule were in said buildings and said buildings were upon said premises; and that all of said goods and chattels mentioned in the schedule originally filed were in the buildings and upon the premises known as the New York Mill.

And by adding to said schedule the following items:

Card Room, New York Mill.

120. [3 40 in. Barker patent rubbing motions.]*
121. 6 Davis & Furber eleven rub rolls.
122. 1 Roy 40 x 13 grinder and stands.
123. 4 Apperley feeds.

Spinning Room, New York Mill.

124. Ranken & MacDonald fitting of 3120 spindles.

[* Words and figures enclosed in brackets erased in copy.]

Weave Room, New York Mill.

125. 10 92 in. Crompton looms.
126. 10 Crompton box motions.
127. 46 pairs Hardaker temples.

10 No. 3 Weave Room, New York Mill.

128. 32 Tucker stop motions.
129. 37 pairs temples.

Finishing Room, New York Mill.

130. [68 brush lags for gigs.]*

Card Room, Bigelow Street Mill.

131. 1 48 x 13 Roy grinder and stands.
132. [1 48 in. Apperley feed.]*
133. [1 48 in. Bramwell feed.]*
134. 1 48 in. Barker patent rubbing motions.
135. 4 Apperley Feeds.

Spinning Room, Bigelow Street Mill.

136. Ranken & MacDonald fitting of 1056 spindles.

By His Attorney, C. T. CALLAHAN.

Endorsed on back as follows:
May be filed and allowed.

CHARLES H. BECKWITH.

September 30, 1905.

And on the fifteenth day of January, nineteen hundred and six, the plaintiff filed a motion for special precept, which motion is in the words as follow-:

[* Words and figures enclosed in brackets erased in copy.]

Motion for Special Precept.

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

Superior Court.

First Monday of May, 1905.

11 WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

Motion by Plaintiff for Order of Attachment of Defendant's Property.

Now comes the plaintiff and, aver-ing that no sufficient attachment of the defendant's property has been made to secure any judgment that the plaintiff may obtain, that the defendant has a quantity of personal property in Chicopee in said County consisting of woolen machinery, shafting, pulleys, belting, tools, supplies and other chattels and has other personal property elsewhere and has funds deposited in the Springfield Safe Deposit and Trust Company, a corporation duly organized under the laws of said Commonwealth and having a usual place of business in said Springfield, and in the Franklin County National Bank, a corporation organized under the National Banking Act and having a usual place of business in Greenfield in our County of Franklin, that said chattels are not sufficient to satisfy such judgment as the plaintiff may obtain, and that this action is now pending before this court, moves this Honorable Court to issue its precept for the attachment of said chattels and such other personal property as may be found and for the attachment of said funds in the hands of said corporations.

By His Attorney, C. T. CALLAHAN.

which motion was allowed and a special precept issued, which is in the words as follow-, to wit:

12 *Special Precept.*

COMMONWEALTH OF MASSACHUSETTS,
[L. S.] *Hampden, ss:*

To the Sheriffs of our several Counties, or their Deputies, Greeting:

Whereas in an action now pending in the Superior Court for said County, between William J. Corbett of Boston in our County of Suffolk, as Plaintiff, and Michael Craven of Springfield, in our said county of Hampden, as Defendant, and Springfield Safe Deposit and Trust Company, a corporation duly organized under the laws of said Commonwealth and having a usual place of business in said Spring-

field, and Franklin County National Bank, a corporation organized under the National Banking Act and having a usual place of business in Greenfield in our county of Franklin, as Trustees, in an action of tort, writ being dated March 28, A. D. 1905 and numbered 2494 on the Docket of said Court to recover Ten Thousand Dollars wherein said Court has ordered a special precept to issue to attach the goods or estate of said defendant to secure the judgment which said plaintiff may obtain in said cause.

We command you therefore to attach the goods or estate of said defendant to the value of ten thousand dollars. And whereas the said plaintiff says, that the said defendant has not, in his own hands and possession, goods and estate to the value of Ten Thousand Dollars, aforesaid, which can become at to be attached, but has intrusted to, and deposited in the hands and possession of said Springfield Safe Deposit & Trust Co. and Franklin County National Bank,
13 Trustees of the said Defendant goods effects, and credits, to the said value: We command you therefore that you summon the said supposed trustees (if they may be found in your precinct), to appear before our Justices of our said Court, to be holden on the first Monday of February next, to show cause, if any they have why execution to be issued upon such judgment as the said Plaintiff may recover against the said defendant in this action (if any) should not issue against said goods, effects or credits, in the hands and possession of the said Trustees, and make return of this writ on or before the first Monday of February aforesaid with your doings therein.

Witness, John A. Aiken, Esquire, at Springfield, the fifteenth day of January in the year of our Lord one thousand nine hundred and six.

ROBERT O. MORRIS, *Clerk.*

Upon which special precept is the following returns by the officers who served the same.

Officers' Returns.

JANUARY 16TH, A. D. 1906.

FRANKLIN, *ss:*

By virtue of this writ (Special precept) I have this day at seven minutes past two o'clock in the afternoon summoned the within named, Franklin County National Bank, Trustee, to appear and answer at court as within directed, by delivering in hand to William B. Keith (Teller) of the said Franklin County National Bank, a true and attested copy of the within precept, the said William B. Keith being in *charge* — its banking rooms at the time of service.

14 WM. H. WARD,
Deputy Sheriff.

Service	.50
Travel, 20 M.	1.60
Copy	.50
	$2.60

JANUARY 17TH, A. D. 1906.

HAMPDEN, *ss:*

By virtue of the within Precept, I this day at 30 minutes past 1 o'clock, in the afternoon, summoned the within named Springfield Safe Deposit and Trust Company, one of the within named Trustees to appear and answer at Court as within directed, by delivering a true and attested copy of this precept in hand to John G. Mackintosh, its President, and afterwards on the same 17th day of January, A. D. 1906, I attached as the property of the within named Michael Craven, defendant, a lot of Woolen Mill Machinery, stored in the brick building known as the Consumers Brewery Building, situated in Chicopee in said County, consisting in part of 5 Gigs, 1 Cloath Press, 1 Gig Cylinder, 1 Jack Winder, 32 Broad Looms, 2 Narrow Gig Cylinder, 14 Narrow Looms, 4 Shear's, 5 Pickers, 11 Bramwell Feeds,, 1 Lathe, 1 Fan, 1 Emery Dresser, 3 Dressing Reels, a lot of Belting, a lot of Cloath Beams, a lot of Loom Harness, and many lots of detached parts of Machinery, the names of which is unknown to me, some of which I assume belongs to or with the above named Machinery, and all Mill Machinery of every name and nature belonging to said defendant and stored in said building, and on the 18th day of January, A. D. 1906, I attached as the property of the within named defendant, all the Woolen Mill Machinery and unattached parts thereof of every name and nature, stored in the Wooden building known as the Abby Store house, situated in said Chicopee in said County, and occupied by the within named defendant, consisting in part of 2 Twister 6 Card Cylinder, 1 Card Grinder, 1 Pair of Mules, 2 Bramwell Feeds, 1 Beamer, 1 Fan, lot of Shafting Hangers and Belting and other detached parts of machinery the names of which is unknown to me; and afterwards on the 19th day of January, A. D. 1906, filed a true and attested copy of the within precept, with so much of my return as relates to the attachment of personal property to- heavy and bulky to be readily removed, in the office of the City Clerk of the City of Chicopee; and on the 20th day of said January, A. D. 1906, I gave the within named defendant in hand a true and attested copy of the within Precept.

S. T. MILLER,
Deputy Sheriff.

Fees.

Service	1.50
Attachment	1.00
Copies	1.50
Travel	3.00
Custody 10 days	5.00
	12.00

On the seventh day of February, nineteen hundred and six, the defendant filed a motion to amend his answer, which is in the words as follow-:

Motion to Amend Answer.

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

Superior Court.

JAN. 11, 1906.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

The Defendant's Motion to Amend Answer.

And now the defendant respectfully moves that he be permitted to amend his answer so that it will read as follow-:

And the defendant denies each and every material allega-
16 tion in the plaintiff's writ and declaration as amended contained.

And the defendant further answering says that such title as the plaintiff has in the property described in his declaration he acquired September 18, 1901, by purchase from Nathan P. Avery, of Holyoke, in said County of Hampden, in his capacity of trustee in bankruptcy of the estate of James Connor, of said Holyoke; that prior thereto on August 15, 1901, said Avery as trustee as aforesaid, filed in this court, for said County of Hampden, in equity, a bill of complaint against the defendant herein alleging that said property was claimed by the defendant but that it belonged to him as trustee as aforesaid, and praying that the title and possession of said property be decreed to him as such trustee, and the defendant admitted claiming said property and denied said Avery's title and the case was tried on the merits on the issue of title as of the day of the date of said bill, and the findings therein were against the plaintiff, Avery, and in favor of the defendant, and a final decree was entered therein dismissing said bill, and said decree now remains in full force and unreversed, and the defendant says that the question of the ownership of the property in question has been fully adjudicated.

By His Attorney, CHARLES H. BECKWITH.

Endorsed on back as follow-:
May be filed and allowed without prejudice to plaintiff.

C. T. CALLAHAN,
Plff's Att'y.

17 And within ten days from the return day of said special precept, said Trustee, Springfield Safe Deposit & Trust Company, appeared by its attorney, Walter S. Robinson and filed its answer to wit:

Answer of Trustee, the Springfield Safe Deposit & Trust Co.

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

Superior Court.

FEBRUARY 15, 1906.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

Answer of Alleged Trustee.

And now comes George H. Kemater, Treasurer of the Springfield Safe Deposit and Trust Company, summoned as Trustee of the defendant in the above entitled action, and makes answer that at the time of the service of the special precept in said case, dated January 15, 1906, upon said Company, it had not in its possession or control any goods, effects or credits of said defendant, and of this said Kemater submits himself to examination upon his oath.

Wherefore he prays that said Company may be discharged and for its costs.

GEO. H. KEMATER.

HAMPDEN, *ss:*

FEBRUARY 15, 1906

Then personally appeared the above named George H. Kemater and made oath that the foregoing answer subscribed by him is true.

Before me,

WALTER S. ROBINSON,
Justice of the Peace.

Endorsed on back as follows:

I appear for the Springfield Safe Deposit and Trust Co.

WALTER S. ROBINSON.

18 And on the thirty-first day of May, in the year last aforesaid, the Auditor filed his report, which is in the words as follows, to wit:

Auditor's Report.

Pursuant to the rule in the above entitled cause I heard the parties therein at different times between September 26, 1905, and May 5, 1906, hearings consuming twenty-nine and one-half days. The plaintiff was represented by Christopher T. Callahan, Esq., and the defendant by Charles H. Beckwith, Esq.

A very great amount of detail was investigated at the hearing of this case and an extended report being necessary to treat the issues litigated I have divided the report into two parts for convenience in its consideration.

Part One.

Statements and Findings on the General Issues Involved in the Case.

1. In the year 1871 James Connor engaged in the woolen manufacturing business in Holyoke, in this county. After this date and prior to 1882 he placed a comparatively small amount of machinery in a mill belonging to the Holyoke Water Power Company, which mill was generally known and will be designated hereinafter as the Bigelow street Mill in Holyoke. A part of this mill was equipped and run as a shoddy plant.

2. In 1882, desiring to increase his business and establish a larger plant, he purchased all the mill machinery and all the personal property connected with such machinery in the building which was known and will be designated herein as the New York Mill in Holyoke. This purchase was made from Henry Hilton, late of New York City, deceased. This machinery consisted of cards, looms and other machinery and equipments necessary and pertinent to a plant engaged in manufacturing woolen cloth.

3. The plant established in the Bigelow Street Mill at the time of the purchase of the machinery in the New York Mill was in capacity a four set mill, that is, it had four sets of cards with the necessary complement of looms and other machinery. The additional plant acquired by purchase of machinery in New York Mill was an eleven set plant, that is, eleven sets of cards with their complement of looms and other necessary machinery. The quantity and kind of machinery constituting the complement of a set of cards are determined by the character of the required product in any given case. In the case at bar changes in the product from time to time, from 1885 to 1901, made necessary or expedient the purchase and addition of the machinery described in plaintiff's declaration. These two mills were so situated with relation to each other that business could be
19 and was carried on in both as a united plant, although there was a slight difference in classification of products. Connor conducted the business in these two mills until May 13, 1901, at which time he was petitioned into bankruptcy by an involuntary petition filed by his creditors, and upon such petition was adjudicated bankrupt June 18, 1901.

4. On the 3rd of August, 1901, Nathan P. Avery was appointed trustee in bankruptcy of Connor's estate and was duly qualified as such trustee before September 18, 1901, at which date he made a sale of certain property of the bankrupt estate to the plaintiff in this action, William J. Corbett. Under this sale the plaintiff claims title to the property in controversy, being the property described in the declaration in the plaintiff's writ.

5. In 1882, at or about the time of the sale of the machinery in the New York Mill to Connor, the mill property itself was purchased by and conveyed to the Holyoke Water Power Company, who thereafterwards remained the owner of the New York Mill and Bigelow Street Mill, including the Shoddy Mill, James Connor being tenant at will of the premises.

6. The sale of the woolen machinery plant of the New York Mill was made by Hilton to Connor February 24, 1882. The purchase price was fifty thousand dollars, of which twenty thousand dollars was paid in cash by Connor at the date of the sale and the balance of the purchase price was evidenced by three notes for ten thousand dollars each, given by Connor to Hilton and secured by chattel mortgage on the machinery and equipment thus sold. These notes were payable respectively in one, two and three years. After this purchase and prior to April 6, 1885, Connor purchased and added to this plant machinery to the value of ten thousand dollars.

7. On the 12th of October, 1883, when one of the notes given for the purchase price had been paid, making in all thirty thousand dollars in cash paid by Connor, a sale of the woolen machinery plant in the Bigelow Street Mill was made by Connor to the defendant, Michael Craven, the sale or memorandum thereof being in writing and of the following tenor:

HOLYOKE, MASS., *Oct.* 12, 1883.

Mr. Michael Craven Bought of Connor Bros.

4 Entire Sets Woolen Machinery stored in Woolen Mill, corner of Cabot & Bigelow Streets for Ten Thousand Dollars ..... $10,000.

Received payment,

CONNOR BROTHERS.

20 It was agreed that amount in this memorandum should be six thousand dollars, ten thousand dollars being inserted by error.

8. On the 6th day of April, 1885, a further memorandum of sale was made by Connor to the defendant Craven of the following tenor:

HOLYOKE, MASS., *April* 6, 1885.

Mr. Michael Craven Bought of Connor Brothers.

Eleven sets of Woolen Machinery for Twenty Thousand Dollars $20,000

and other valuable consideration, the same being free from all incumbrances and includes all the machinery, tools, shafting and hangers, bought of Henry Hilton, now on the premises described hereafter, with all machinery and improvements added thereto since said purchase of said machinery, is at present stored in the brick woolen mill building owned by the Holyoke Water Power Co., situated in Main street, known as the New York Mill.

Received payment,

CONNOR BROS.

9. On the 10th day of March, 1891, Connor delivered to the defendant a memorandum of sale of the following tenor:

HOLYOKE, MASS., *March* 10, 1891.

Mr. Michael Craven Bought of Connor Bros.

10 "Knowles" Broad Looms, $275..... $2,750
stored for said M. Craven in Bigelow Street Woolen Mills, Cor. of Cabot St.
10 "Knowles" Broad Looms, $275..... $2,750
stored for said M. Craven in New York Mill on Main St. Cor. of South St.

$5,500

Received payment,

CONNOR BROS.

10. It was admitted that the sales of April 6, 1885, and October 12, 1883, conveyed to defendant title to the property described in the memoranda of those dates and it was also agreed that the twenty looms described in memorandum of March 10, 1891, became
21 the property of the defendant. Upon these specific sales from Connor to the defendant and various supplemental agreements and contracts claimed by defendant to have been made orally between the same parties from April 6, 1885, to May 13, 1901, the defendant based his claim of title to the property in controversy in this suit. No controversy arose as to the validity of the sales to which these specific memoranda relate, that is, the sales of October 13, 1883, April 6, 1885, and March 10, 1891. These sales are conceded by the plaintiff to be valid and to have conveyed title to the property which was made the subject matter of said sales. It was denied by the plaintiff that any agreements relating to, or sales of the property other than these specific sales were made at any time.

11. It was stated in testimony by both Connor and the defendant that the reason which operated to induce Connor to make these transfers of property to the defendant Craven was probable inability of Connor to meet the mortgage notes to Hilton and the likelihood that the mortgage would be foreclosed and the property of the New York Mill lost to Connor. The transfer of looms to defendant by sale of March 10, 1891, was not made for any monetary consideration. Certain looms of defendant were taken out of the New York Mill and the twenty in question installed therein, Connor taking title to looms removed. The mortgage notes were paid as each matured. According to the testimony of Connor he was enabled by receipt of money from defendant, as set out in memoranda of October 12, 1883, and April 6, 1885, to meet these obligations and secure a discharge of the mortgage.

12. The sale made April 6, 1885, was a formal transfer or conveyance made after all liens on the property had been discharged and at a time when no third parties had any property rights therein, the actual sale of the property described therein having been made in March, 1884, at which time property was still encumbered by mortgage to Hilton.

13. After the title to the property had been vested in said defendant Craven by the sale of 1884 and at a time substantially contemporaneous with the sale the parties to that sale entered into an agreement whereby the defendant Craven agreed to lease and did lease to Connor orally as tenant at will all the machinery acquired by him by virtue of that sale, being all the machinery and property described in memoranda of 1883 and 1885, upon terms and conditions substantially as follows: That Connor should pay to defendant Craven a yearly rental of six per cent. upon the purchase price of twenty-six thousand dollars, which Craven had paid to Connor; should pay all taxes assessed on such machinery and should keep the same
22 insured and in repair. The defendant further contended that as an element of said contract of letting Connor agreed to keep good the depreciation. It was understood and agreed that this machinery and property should be operated and used by Connor in carrying on his woolen manufacturing business. It was not contended that the amount and kind of repairs to be made were in any manner passed upon at the time of the making of this agreement, nor was it claimed by the defendant that any particular method of keeping up the depreciation was to be followed, only that the general words "to keep good the depreciation" were agreed upon.

14. I do not find that the defendant's contention is sustained as to this latter part of the contract of letting, the contract being substantially as set out in preceding paragraph. The testimony relating to this, as to substantially all the supplemental contracts and agreements claimed to have been made was given by James Connor and the defendant Craven, the parties to the letting.

15. It is also in evidence and I find that James Connor is a party in interest to this suit; that he will share equally with the plaintiff in any profit that may accrue from the sale of the property purchased by the plaintiff Corbett from Avery, Trustee, September 18, 1901.

16. It does not appear in evidence, nor was it contended, that from the date of the sale Connor to Craven, October 12, 1883, until the bankruptcy of Connor in 1901, any request was ever made by the defendant Craven upon Connor to take action of any kind to make good any depreciation of the property leased to and operated by Connor and there was no evidence offered and there was no contention made by the defendant that any request was ever made upon Connor to make repairs of any kind during this interval of eighteen years during which the machinery, the property in question, was operated continuously.

17. From time to time, that is, from 1885 to 1901, machines and parts of machines and other property necessary or incidental to the carrying on of the business of Connor were purchased by him and placed in the New York Mill or in the Bigelow Street Mill. These purchases so far as dealt with herein, were made either as additions to the machinery plant as it existed or as additions or improvements to specific machines of the plant, which specific machines belonged to the defendant Craven. These additions were made by Connor as a result of his own desire to increase the output and efficiency of the plant. Some of the additions resulted from changes made necessary

by a change in the product of the mill. In the earlier years of the operation of the mill its general product consisted of narrow
23 cloth. As a result of a change in the general style of cloth upon the market it was deemed expedient to change the mill so that it would manufacture wide goods. As a result of this movement of change in 1891 Connor purchased twenty broad looms of the kind designated Knowles Looms. These were installed in first instance one-half in Bigelow Street Mill and one-half in New York Mill. These looms displaced thirty-eight narrow looms known as Greenhalge looms, which looms had become substantially obsolete and on the market valueless as part of a woolen manufacturing plant. On March 10, 1891, after the Knowles broad looms had been installed, Connor gave the defendant Craven the memorandum of sale already set forth under that date. Under this sale it is conceded by the plaintiff in this action that the defendant acquired title to the twenty broad looms in question, which were a part of the plant at the time of the bankruptcy of Connor, 1901.

18. During the years intervening from 1883 to 1901 all of the property in the plant operated by Connor was taxed to Connor and the taxes paid by him. Insurance policies were issued to Connor in his name and as the owner of the property, and the premiums thereon paid by Connor. All the property in the plant was ostensibly used and controlled by Connor to all intents and purposes as though his own. Improvements upon and additions to looms, cards and other machinery were made from time to time as seemed to best suit the convenience of Connor or his business needs. It does not appear that it was known generally or at all beyond immediate parties to the contract that the defendant Craven owned any of the machinery which constituted these plants or that the memorandum of sales herein recited were in existence.

19. The property in controversy in this action was all added to the plant subsequent to April 6, 1885, and prior to May 13, 1901, when Connor was petitioned into bankruptcy. This property in controversy comprises the greater part, but not all, of the additions made by Connor to the machinery plant during this period.

20. It was contended by the defendant in the first instance that all of this property passed to him by virtue of the condition in the contract of letting, that depreciation should be made good. Having found that no such provision was inserted in or made part of the contract of letting, the defendant's contention is of no avail to establish title to this property under such a provision of that contract and I do not find that title to the property in controversy passed to the defendant by any provision of the contract of letting, except so far as the element of repair may enter into findings for the defendant hereinafter set forth.

22. It was further contended by the defendant, that at each of the different times when additions were made to the plant by
24 Connor certain oral agreements were made by Connor with the defendant by virtue of which the defendant gained title to all the property in controversy. These agreements set out and contended for by the defendant are treated herein as supplemental

agreements. These alleged agreements relate to items or groups of items which are contained in the declaration and in the detailed consideration of these items or groups herein the defendant's contentions as to such special supplemental agreements are further passed upon and eliminated.

23. The defendant, on cross-examination, stated that the value of the property which was covered by the memorandum of sale of April 6, 1885, was worth at that date between fifteen and twenty-five thousand dollars under certain circumstances not disclosed by the witness, and that this property had depreciated in value during the time intervening between such date and the bankruptcy of Connor. His testimony at a former trial not between the parties hereto, but wherein the defendant Craven was plaintiff and the value of the machinery in the New York Mill in 1901 and 1903 was in issue, was introduced in evidence, from which it appeared that he had placed a value of substantially forty-five thousand dollars upon so much of the property as he had enumerated at his testimony in the previous trial, which did not include all the property in the mill at the time of Connor's failure which the defendant Craven claimed to own.

24. The plaintiff in this action conceded that the property in the mill on April 6, 1885, together with the property described in the memorandum of sale of March 10, 1891, was the property of the defendant Craven; that it was leased to Connor and by the terms of the letting it was incumbent upon Connor to keep the property in repair.

25. The plaintiff further contended that the property in controversy in this suit was property purchased by Connor subsequent to April 6, 1885; that it was not covered by the memorandum of sale of that date, or any other memorandum of sale or any other contract of sale made by Connor with the defendant Craven and the title to this property was in Connor at the time of his adjudication in bankruptcy. Substantially all of the direct evidence furnished in support of this contention was given by Connor. Connor and Craven were intimate friends during nearly all the lifetime of each, and in 1883 Craven was superintendent of the woolen manufacturing plant in Holyoke belonging to Connor.

26. During the eighteen years from 1883 to 1901 the defendant Craven was engaged in divers occupations. In the early part of this period he carried on a woolen manufacturing business, first at South Deerfield and later at North Adams, both in this state. He then made a trip to the Pacific coast, going or returning through Canada, a second trip to Texas, from which state he traveled
25 North into Canada again. Several trips were made to the Southern states of this country at different times during this period, and at one date his residence was established at Columbus, Georgia. On some of these various trips he either resided or remained for a substantial length of time at each of the cities or towns of Montgomery, Mobile, Livingston or De Mopolis, in the state of Alabama, and was connected with a lumber manufacturing business in the town of Gurley, Alabama, for a period of two years, during which time his residence was in that place.

27. The evidence of the defendant in regard to his whereabouts and his different places of residence between 1888 and 1896 was confusing and contradictory. I am satisfied, however, that he was absent from Hampden County at different times when certain of the additions were made to the machinery plant of the New York mill by Connor and with relation to the property so added it was physically impossible that he should have been present and had the conversations at the times and under the circumstances detailed in his testimony and upon which conversations were based claims of supplemental contracts.

28. It does not appear that during his extended periods of absence from Hampden County he took steps to inform himself as to condition of the machinery plant, its need of repairs or its condition with regard to depreciation, and in fact, it does not appear that at any time he had ever claimed the machinery plant or any part of it was depreciating or had made any specific request for a substitution for or addition to any machine or part of machine.

29. It was contended by the defendant that certain articles of property described in the plaintiff's declaration, being items numbered 43, one speck dye machine No. 52, one dye tub No. 64, one dye tub No. 65, one cloth washer No. 72, one centrifugal pump No. 88, two fulling mills No. 18, 48 in. fan No. 23, 48 in. fan and No. 97, four 36 in. fans, together with all shafting, hangers, pedestal boxes, ceiling brackets, wall brackets, pulleys, belting, also the water pipes, steam pipes, gas pipes, and the cocks, valves and fittings connected therewith, were fixtures; that these articles of property became real estate when placed in mills and that the failure of Connor and the Trustee Avery to remove the same prior to the termination of their tenancy defeated their title to such property, so that the plaintiff cannot recover against defendant in this suit even though it should appear that Connor had title to this property at time of its installation in the plant and had not divested himself of such title at date of his bankruptcy.

30. I find that Connor was a tenant at will of the Holyoke Water Power Company during his occupation of these premises; that his tenancy terminated at the time of his bankruptcy; that Avery as Trustee never became tenant of the Holyoke Water Power Company; that on September 18, 1901, the date of the sale —
26 Avery Trustee to the plaintiff, all rights of tenancy on the part of Connor, the Trustee Avery, or the plaintiff Corbett had been terminated and that no such rights existed, if it be material herein I find that the property described in the item set forth in the preceding paragraph would have been forfeited to the landlord, the Holyoke Water Power Company, had the company made such claim of forfeiture, and that as between the plaintiff herein and the Holyoke Water Power Company the plaintiff would not be entitled to recover the value of such property if the Holyoke Water Power Company asserted title thereto. From conduct and acts of the Holyoke Water Power Company in 1901, 1902 and 1903 it does not appear that they ever asserted title to any of this property or that they ever interfered or attempted to interfere with the full exercise of control

and dominion over it either by the plaintiff Corbett or the defendant Craven. And it further appeared in evidence in this hearing, the evidence being the testimony of the present treasurer of the company, elected first to office in 1903, and also the superintendent, agents of such corporation, who were both charged with the duties of protecting, caring for and generally looking after the mill property of the corporation, including the New York Mill and the Bigelow Street Mill, that they on behalf of the corporation expressly disclaimed any right of ownership in the property in controversy in this suit; that so far as the Holyoke Water Power Company was concerned they were willing that it should be removed by whatever person had title thereto other than the company and that the company did not at the time of this hearing and had not at any previous time asserted title to said property by virtue of its right to claim by reason of the failure to remove during the term of tenancy or for any other reason; that as to the main lines of shafting in the New York Mill the company claimed the same as being its property by virtue of a sale to it from Hilton in 1882, but that it did not claim or contend for any other shafting or property located in either of said mills, except such as the company had otherwise purchased and placed in said mills itself and which was not in controversy herein. I find that Connor, Avery, Trustee, and the plaintiff Corbett never intended that title to this property should pass to the Holyoke Water Power Company and never waived any right or title thereto.

31. I find that the plaintiff Corbett had title to this property as against the defendant Craven and had the right to remove or dispose of the same and that the defendant's acts in relation to the property amounted to a conversion of it. The circumstances relating to the installation and location of property described in these items within the mill is dealt with in detail under the specific consideration hereinafter given to each item.

27 32. The defendant further contended that he had acquired title to certain parts of the property in controversy by accession; that because certain of the chattels sued for in this action had been attached to property of the defendant by Connor, that the defendant had thus acquired title to that property by operation of law. The items to which this contention was directed are twelve in number, being 96, 107, 108, 121, 123, 124, 126, 128, 129, 134, 135 and 136. The circumstances attendant upon the attachment of these chattels to the property of the defendant are not uniform in their application. This defence is dealt with specifically hereinafter in relation to each of these items.

33. The defendant further contended that four tons, estimated of finished castings and seven tons, estimated, unfinished castings, described in items No. 5 and No. 6, were not the property of the plaintiff, because the plaintiff had mingled castings claimed by him with castings admittedly the property of the defendant; that no distinguishing marks were upon these castings and the similarity of appearnce of the respective castings were so great as to render it impracticable, if not impossible, to separate the property of each; that the castings were of many different kinds, sizes and shapes, with

different values, and these characteristics were common to the castings claimed by both parties; that the confusion arising from this commingling had been caused without the fault of the defendant; that the defendant's constituted a substantial part of the whole; that the castings could not be separated, not having any distinguishing marks to designate such castings as belonged to the defendant or such as belonged to the plaintiff. In short by the confusion resulting from the mixture of the property of the defendant with that of the plaintiff, which confusion was not due in any way to the action of the defendant, the defendant became entitled to take the entire amount, and in view of the inability of the plaintiff to pick out and identify the property belonging to him that as to these items he was not entitled to recover.

34. I find that *that* the defendant's contentions in regard to property described in these two items are sustained and that he is not liable for the value of the same.

35. On the 15th day of August 1901, Nathan P. Avery, as Trustee, filed in the Superior Court of Hampden, a Bill in Equity wherein the defendant in this action, Michael Craven, was the defendant. A copy of said Bill in Equity, of the answer therein, of the Report of the Master appointed to hear the parties and report the facts in said suit and of the decree entered therein dismissing the bill, with such other facts and statements as go to make up the record of said suit as it appears in the Superior Court for said County is hereto annexed, marked "Exhibit A," which is a copy of
28 the record existing in said Court. This record was offered in evidence by the defendant who contended that it was conclusive as to an adjudication of the issues here involved and that the decree entered in said suit of "Bill Dismissed" was a judgment going in bar to this action. This evidence was admitted over the objection of the plaintiff, who contended that the plaintiff in this action was not a privy of Nathan P. Avery Trustee and was not bound by the decree in former suit.

The record was admitted as evidence under the defendant's plea of a former judgment in bar of this action.

36. It was contended by the defendant that the allegations contained in the Bill in Equity put in issue the title to all the property in the New York Mill at the date of Connor's adjudication in bankruptcy; that the allegations contained in regard to the sales of Connor to Craven were in the nature of statements of the evidence to be adduced and did not qualify the initial allegation or charging part of the bill which alleged that the plaintiff owned all of the property in the New York Mill and that the defendant claimed to own it.

37. I find from the record as evidence and from the testimony of Avery, Trustee, that the title to all the machinery in the New York Mill was not actually litigated in that suit; but that the question actually investigated and tried related to the validity and nature of the sales Connor to Craven 1883, 1885 and 1891, which are the sales hereinbefore set out; that the validity of these sales was established by the adjudication in that suit and that as to the property acquired

by Connor after April 6, 1885, and set forth in this action in plaintiff's declaration the judgment in the former action does not affect the title or bar the plaintiff's right to recover for its value.

38. It appears in evidence and I find that in 1901 at or about the time of the filing of the petition in bankruptcy against Connor the defendant Craven entered the New York Mill to inspect and so far as need be care for all the property therein which he claimed, which property included that now in controversy in this suit. Following this action the defendant visited the assessors and had the property assessed to him and also had policies of insurance covering the property in question issued to him by divers companies. He continued to visit the mills from time to time, examining the property and taking such care of it as he deemed necessary for its preservation. His entry to the mills during this period was forbidden by Nathan P. Avery, Trustee, but he continued to enter in defiance of the Trustee's order until a temporary injunction was obtained in the suit in equity brought by Avery against him in August, 1901. This injunction did not by its terms prevent the defendant from in-
29 specting and caring for the property, but he did cease to during its continuance. In connection with this contention of the defendant I find that Avery never acquired any interest or title in the goods sued for other than such interest or title as he acquired by virtue of being appointed trustee in bankruptcy of Connor. All the property mentioned in the Declaration was at date of filing said Bill located in the buildings and rooms designated in the Declaration as containing the same, and none of the property so mentioned was included in the exceptions set out in Paragraph 3 of the Bill of Complaint in said suit.

39. All these actions with reference to the property in question were taken by the defendant in furtherance of his claim of title to the same and were the visible signs, exhibited prior to August 15, 1901, of his claims to title, which claims were completed so far as the defendant was concerned by the removal of the property by him from the mills in September, 1903, the removal having been delayed by the injunction issued in the suit of Avery *v.* Craven and by other causes, notably the leasing of the property to Beebe, Webber & Company, as herein set forth, consideration of which causes are not pertinent to the questions in issue here. During the period intervening between the bankruptcy of Connor in 1901 and the removal in 1903, the defendant's acts and assertions relating to this property were steadily consistent with his claim of ownership made were taking possession at date of bankruptcy.

40. As a result of the acts and assertions of the defendant with reference to the property in question, as detailed or referred to in two preceding sections, I find that possession of the same was taken by defendant prior to August 15, 1901, for the purpose of enforcing his claim of ownership thereto. I find that the defendant converted the property named in the schedule hereto annexed marked "Exhibit B" to his own use during the summer of 1901 and prior to August 15th, of that year, that his actions with reference to the property prior to the period constituted an exercise of control and

domain over it inconsistent with and in defiance of the rights of the then owner, Nathan P. Avery, Trustee therein.

41. It was contended by the defendant that this property in common with other property admittedly of the defendant located in the New York Mill was seriously damaged during the fall and winter of 1901 and 1902 by reason of the bursting of sprinkler heads, sprinkler pipes and water pipes which furnished the sprinkler system in the New York Mill with water; that as a result of this bursting of pipes the machinery was wet; that wetting the machinery caused the iron parts to rust, the leather belting and rubber belting to crack and parts of the wet machinery to swell, warp and spring. This evidence was offered to show that the value of the property when removed from the mill by the defendant in 1903 had been very greatly lessened from its value in September, 1901.

42. In view of the finding herein that the conversion occurred prior to this alleged damage, this evidence becomes immaterial and any finding thereon would not be pertinent.

43. I find that on the 18th day of September, 1901, Nathan P. Avery, Trustee in bankruptcy of the estate of James Connor, conveyed to the plaintiff in this action property described in the declaration in this suit and which comprises the items named in Schedule B hereto annexed. This conveyance was made by Avery in connection with the sale of stock and goods on hand at date of Bankruptcy, which stock and goods were conceded to be owned by Avery, Trustee. The Trustee in making the sale to plaintiff was almost wholly ignorant of the amount of machinery owned by him and not affected by the transfers to the defendant in 1883, 1885 and 1891 as herein detailed. The trustee had not been informed by Connor concerning the amount of machinery and property added to the plant subsequent to April 6, 1885, and fairly assumed that such machinery and property was of less value and smaller in amount than is machinery and property herein sued for. The entire purchase price in sale of Avery to plaintiff September 18, 1901, was sixty-five hundred dollars.

44. I find that in May, 1902, the defendant executed and delivered a lease of this property to the Beebe-Webber Company of said Holyoke, which lease covered all the items in Schedule B hereto annexed, except items 24 to 43 inclusive, and items 129, 131, 135 and 136, and that said Beebee-Webber Company took and retained possession under said lease for the term thereof, one year.

45. I further find that the defendant removed substantially all of said property described in Schedule B from the New York and Bigelow Street Mills in September, 1903, a small amount having been disposed of prior thereto, and has since sold the same or stored it in buildings owned or leased by himself. It was contended by the defendant, while admitting the removal of the other property, that he did not remove the shafting, pulleys, hangers, brackets, pedestal and wall boxes set out in various items of Schedule B. In view of the finding herein to the effect that defendant took possession of this property and converted it in 1901 a decision of this contention is not material.

46. The defendant offered evidence to show that a fair rental value of woolen machinery similar in character and situation to that in New York and Bigelow Street Mills was one thousand to fifteen hundred dollars per set in 1884 and years following, and I find that to be substantially true. The rental price paid by Connor, which includes rent of machinery and buildings, cost of power, taxes and insurance, amounted to substantially $600.00 per set. The defendant contended that because of this low rental rate the agreement to keep good the depreciation was made, but I do not so find. Connor and the defendant Craven were agreed in testimony that as part of the conversation in which the oral contract of letting was made, it was stated that Connor had given the defendant a good bargain in the sale of the machinery and the defendant in consideration of this bargain would make his rent charge low, and I find this to be the fact. The defendant offered the rental price set out in Beebe-Webber Company lease as evidence of rental value of these sets of machinery, but this offer was rejected and the price stated in the lease was not considered as evidence on this question. The lease while in evidence was not offered or admitted for any special purpose.

31

Part Two.

Specific Items of Property Set Out in Declaration, Considered Serially.

I herewith consider all of the items set out in the plaintiff's declaration and make disposition of them according to the following statements and findings.

47. Items 1 and 2 are two lathes, purchased by Connor in 1886, for which he paid the sum of $70.00 each. These lathes were additions to the running plant of the mill, were not in substitution for any property of the defendant removed, worn out or destroyed by Connor and were not added to the property in pursuance of any agreement by Connor with the defendant by which the defendant was to acquire title to them. These two lathes were in the New York Mill on the 18th day of June, 1901, the date of the adjudication in bankruptcy of Connor and were his property at that date. I find the value of these lathes to be $60.00 each, such being their value as individual pieces of property to remove from the mill at the time of their conversion.

48. Item 3, one upright drill purchased by Connor in 1898, added to the machinery in the New York Mill by Connor, and concerning which there was no agreement, express or implied, by which title passed to the defendant. This piece of property belonged to Connor, was in the mill June 18, 1901, and had a value of $44.00 at that date, its value being treated as that of a piece of property to be removed from the mill.

49. Item 4, twenty flat and twist drills, purchased by Connor in 1898. These drills had been worn by use prior to June 18, 1901,

and I am not satisfied that twenty drills were in existence at
32 that time in mill. Title at that date was in Connor. I find the fair market value of these drills to the number of twelve upon the basis of the preceding valuations is $1.80.

50. Items 7 to 23, inclusive, consisting of two fans, items 18 and 23, with their attendant shafting, pulleys, brackets, belts and other equipments, were purchased by Connor between 1888 and 1901, were added to the machinery in the New York Mill, title to which was not acquired by the defendant by any agreement, express or implied, but remained in Connor until the 18th of June, 1901, at which time their values were the amounts set forth following each item in Schedule B. The principal items, 18 and 23 two large fans, were placed in the machine shop of the New York Mill and were operated by belts and other parts of machinery contained in the foregoing list of items.

51. Items 24 to 35, inclusive, consisting of shafting, pulleys, belts and other equipments named in the schedule, used in that part of the New York Mill which was designated as the Narrow Weave Room, were additions made to the machinery in the year 1893 by Connor, with the exceptions of items 32, 33 and 35, which were added in 1899 and 1900 respectively, the title to which property did not pass to the defendant by any contract express or implied. This property was in the mill June 18, 1901, and belonged to Connor at that date. The values are set out in connection with each item in Schedule B.

52. Items 36 to 41, inclusive, related to the steam and gas pipes used in the part of the New York Mill called the Narrow Weave Room. These were acquired by Connor in 1893. Title did not pass to the defendant by any contract express or implied, and the same were in the mill June 18, 1901, and belonged to Connor. From the difficulty of removing the pipes and fittings named in this latter group of items the value of these was necessarily small and is set forth in relation to each in Schedule B.

53. Item 42, one measuring reel was placed in the New York Mill in 1893 by Connor, title to which remained in him until June 18, 1901. This piece of machinery was constructed in the mill, except as to certain parts which were purchased. It was in Narrow Weave Room, so called, from installation to June 18, 1901. It was an addition to machinery plant of New York Mill and at date of conversion of the value set out in Schedule.

54. Number 43, one speck dye machine complete. This was a machine used for dyeing woolen cloths. It was constructed in the New York Mill in 1891 by Connor and it remained in the mill, his property, until his adjudication in bankruptcy. It was a machine of large size, setting upon a brick foundation in the mill. Its
33 fair value when constructed and placed in operation in 1891 was $175.00. From all the evidence in the case it is difficult to establish a satisfactory value for this machine at the time of its conversion by the defendant. It was admitted by the defendant in evidence in this case to have a value of $75.00 in the mill, although in testimony in other cases he had placed the value much greater. I find in this case that he removed and destroyed this machine without

authority and in defiance of the rights of the owner and I place the value upon it which is given by the defendant as its value in the mill, $75.00.

55. Items 44 to 50, inclusive, consisting of belts, driving machinery and attachments were all, except items 45 and 50, placed in that part of the New York Mill called the Old Dye House in 1891 by Connor and were all owned by him at the time of his adjudication in bankruptcy, item 45 being placed in 1898 in the mill and item 50 in 1901. These were additions to the machinery already in the plant and the fair value at the time of conversion by defendant is that given in the Schedule.

56. Item 51, two reels used in dye tubs to carry the cloth, were placed in the mill in 1888 by Connor and were owned by him at the date of his adjudication. The evidence and circumstances from which value of the reels may be found is unsatisfactory, but they had some substantial value and I establish the same at $20.00, which defendant admitted was the value in the mill.

57. Item 52, one large dye tub and reel. It appeared that this dye tub and reel was comparatively new at the time of the bankruptcy of Connor and that together they had a value of $200.00 at the time of installation by Connor, who owned the same June 18, 1901. Title to this property never passed to the defendant and at the time it was converted by him it had a value of $100.00, as set out in Schedule B. The defendant testified that this dye tub was removed by him into the mill yard in September, 1903, and broken up for wood. There was no other testimony as to its disposition.

I find that its removal at all by the defendant was an unwarranted interference with the property of the plaintiff and I establish its value at the sum stated by the defendant to be a fair market value for the tub and reel standing in the mill.

58. Items 53 to 59, inclusive, consisting of driving machinery and connections therewith, were placed in that part of the New York Mill known as New Dye House, in 1893. These items were additions to the general machinery of the mill, were owned by Connor at the time of his adjudication and had the values at the time of their conversion by the defendant which are set out in Schedule B. in
34 connection with each item. The New Dye House was erected and furnished subsequent to 1885 and all, or substantially all, of the machinery and equipment therein contained was in its nature additional to the property which composed this plant when the sale was made to the defendant in 1885.

59. Items 60 to 63, inclusive, consisting of water, steam and gas pipes and fittings, located in said New Dye House were the property of Connor at the time of his adjudication and had the values set out in Schedule B. in connection with each item.

60. Item 64, one dye tub and reel, was placed in the New Dye House in 1899 by Connor, who owned it June 18, 1901. This was a comparatively small dye tub with a value of $20.00 at the time of its installation. I find that the value at the time of conversion by the defendant was $5.00.

61. Item 65, one cloth washer complete, was an addition to the plant placed in the New York Mill in 1891 by Connor. This was

placed in the finishing room of the New York Mill and was used for washing cloth after the same had been fulled. It was added to the plant because of the increased production and necessity for an additional washer. It was a very heavy machine resting upon a stone or brick foundation. It was the property of Connor at the date of bankruptcy, title not having passed to the defendant by any contract, express or implied. I find that its value when installed was $175.00 and at the time of conversion $75.00.

62. Items 66 to 71 inclusive, were driving machinery and equipments used and connected with cloth washer, number 65, were installed at the same date, 1891, and were the property of Connor at the time of his bankruptcy, having been in conjunction with the cloth washer an addition to the plant at the time of their installment. Their values are the amounts set out in Schedule B, in connection with each item.

63. Item 72, one centrifugal pump. This was a pump placed in the New York Mill in 1888 and was used to supply water to a cloth washer, which cloth washer was part of the property in the mill prior to April 6, 1885, and comprehended in the sale of Connor to the defendant. This pump did not take the place of any other pump or machinery which was used for supplying water, except a regular gravity system. This pump was in the nature of an addition made by Connor and title was not acquired by the defendant by any contract, express or implied. This pump was in the mill at the date of Connor's adjudication and I find that it had a value of $60.00 at the time of its conversion.

64. Items 73 to 77, inclusive, consisted of connections and appliances used in the operation of the centrifugal pump, number 72. These were added with the pump, except item 77, rubber belt,
35 which was purchased in 1900. The property described in these items belonged to Connor at the date of bankruptcy, title never having been acquired by the defendant, and the values of these items are the amounts set out in connection with the same in Schedule B.

65. Items 78, 79 and 80, double leather belts and pulleys, were also connected with the operation of the centrifugal pump, item 72, being necessary connections from the counter to the main shafting. The belt (Item 78) was acquired by Connor in 1900 and the pulleys (79 and 80) in 1891. These were acquired by Connor and were his property at the date of the bankruptcy. Their values at the time of the conversion were the amounts set out in connection with these items on Schedule B.

66. Item 81, an iron tank, installed for the purpose of holding soap, was used to facilitate the washing or fulling of cloth. This tank, although heavy, was portable. It was an addition to the property in the mill made in 1885 by Connor, who had title to it at the time of bankruptcy. I find the fair value of this at the time of the conversion by the defendant to have been $17.50, as set out in Schedule B.

67. Items 83 to 87, inclusive, consisting of steam pipe and fittings, were used in conveying heat to the cloth drier, which was a machine located in the New York Mill April 6, 1885. The pipe and fittings

under consideration in these items were put in by Connor in 1893 as an additional means of supplying heat to the cloth drier. From the connection, manner of use and general location as described in the evidence I am not satisfied but that this piece of property should be considered either in the light of repairs or as an accession to the property of the defendant which he would have a right to retain in connection with his cloth drier, which was admitted to be his property. I therefore find for the defendant in regard to these items, which are included in Schedule C. The pipe and fittings were taken from the New York Mill by the defendant, ownership therein being asserted and exercised by the defendant in the same manner as in regard to other property described herein.

68. Item 88, two fulling mills. These were machines constructed and used for fulling cloth, a process of shrinking the cloth by means of friction and heat. These fulling mills were installed in the New York Mill in 1886 by Connor and were his property June 18, 1901. They were additions to the machinery plant in the mill. At the hearing in this case the defendant testified these fulling mills were removed and broken up by him in 1903 because they were of no market value. It appeared also in evidence that at a hearing in another action in which the value of these fulling mills was
36 in question he testified that the mills were worth from seventy-five to one hundred dollars as they stood in the mill in September, 1901, and this testimony was given at a date subsequent to the time of the alleged breaking up. From all the evidence in the case I establish the value of these fulling mills at $75.00 each at the time they were converted by the defendant.

69. Item 89, one double leather belt, and item 90, iron pulleys, were instrumentalities used in connection with the operation of the fulling mills. They were placed in the New York Mill by Connor in 1900 and 1888 respectively, belonged to Connor at the time of bankruptcy, were converted by the defendant and their value is as stated in connection with the items in Schedule B.

70. Item 91, one automatic measuring machine, was used for measuring and inspecting cloth. It was installed in the New York Mill in 1887 by Connor, having been built in the mill. It belonged to Connor June 18, 1901. The value of this machine at the time of its construction was $125.00 and I establish $70.00 as its value at date of conversion.

71. Item 92, one cloth folder. This machine was used for folding the cloth and was installed in 1892 in New York Mill by Connor, to whom it belonged at the time of bankruptcy. It had a value of $15.00 at the time of its conversion.

72. Item 93, one wooden pulley, installed in mill in 1892 by Connor, remained his property and was in mill at time of bankruptcy, converted by the defendant and of the value set out in Schedule B.

73. Item 96, three sets of brushes for gigs. The gigs were machines located in the New York Mill. They were part of the plant transferred by Connor to Craven April 6, 1885, at which time they were equipped with teasel slats, a teasel slat being a contrivance used for raising the nap on cloth. These teasel slats were removed by

Connor in 1895 from three of the gigs and brushes substituted. These brushes were fastened to the gigs by screws. It appeared that these brushes were on the gigs in 1901, at the time of the bankruptcy, and remained there until removed from the mill with other machinery by the defendant Craven in 1903. They were not at any time removed from the gigs. It was necessary to make substantial changes in the cylinders of the gigs in order to attach the brushes and such changes were made. I find that these brushes because of changes made in cylinders to receive them and from the manner in which they were attached to the gigs became part of the defendant's property and that he was authorized to remove the same with the gigs. This item is set out in Schedule C.

37 74. Item 97, four fans. These four fans were operated in conjunction with each other in the drier room of the New York Mill. They were partially incased in a box-shaped frame, which was so placed that by operating the fans the moist air was drawn out of the room. The fans thus incased constituted a drier. These fans were installed in New York mill in 1888 by Connor, they remained there until and were his property at the time of the bankruptcy. I find the value of these fans at the time of the conversion to be $19.00 each, total of $76.00.

75. Items 98 to 106, inclusive, were parts of the motive power used in driving the fans in item 97. These items, with the exception of the three for belting, 101, 102 and 106, were installed in the mill in 1888 in conjunction with the so-called drier. The items 101 and 102 were installed in 1897 and item 106 in 1899. These instrumentalities, together with the fans, made up a completed addition to the machinery plant of the New York Mill and were the property of Connor at the date of bankruptcy. The values are carried out in connection with each item in Schedule B.

76. Item 107, wooden pulleys, were installed in the card room of the New York Mill in 1891. These pulleys were placed on shafting which it was conceded belonged to the defendant Craven and were used to operate cards, which it was also conceded belonged to the defendant Craven. These pulleys were attached by clamps. I find that these pulleys from purposes for which they were used and the circumstances and nature of their installation became the property of the defendant Craven by either or both accession and repair and he is not liable herein for their value. These items are included in Schedule C.

77. Item 108, three sets of Barker Rub Rolls. These were machines used for rubbing strands of yarn and preparing the same for the spinning operation. They were annexed to the cards and performed the functions formerly undertaken by parts of machinery called seven rub rolls. The Barker Rub Rolls in question were a later, more valuable device, which were installed by Connor in the Card Room of the New York Mill in 1892. It appeared that in the attachment of these Barker Rub Rolls to the cards it was necessary to do some cutting to the machines, the cards in question, which were admittedly the property of the defendant Craven. There was a great deal of conflict of testimony as to the amount of labor necessary

to attach the Barker Rub Rolls to the cards and concerning the amount of alteration made in the card to receive the same. There was also much conflicting testimony in regard to the disposition of the rub rolls displaced by the Barker Rub Motions. In regard to these latter, that is, the rub rolls displaced, I find that some of them were in the mill at the time of the bankruptcy, were taken
38 possession of and eventually removed by the defendant Craven, whose property they admittedly were; others were used for repairs on other machines of similar construction. The Barker Rub Rolls purchased and attached by Connor and described in this item were of the value of substantially four hundred dollars at date of bankruptcy. In 1903 when the cards to which these Barker Rub Rolls were attached were removed from the New York Mill by the defendant Craven they were detached. I find because of circumstances attendant upon the attachment of these rolls to the cards and the disposition of the rolls detached that these sets became the property of the defendant, the obligation to repair and the rights gained by accession being considered in this decision. These rolls when attached were of a value of more than eight hundred dollars. The rolls detached were of small value, being of a design old and superseded. The installation of these was a substantial addition to the value of the plant.

78. Item 109, eleven wooden pulleys. These pulleys were attached as pulleys described in item 107, were used to transmit power to machines belonging admittedly to defendant Craven, and I find they became the property of Craven upon their installation and that he is not liable in this action for the value of the same.

79. Item 110, one Cleveland Dresser Reel, which was installed in 1890 in the dressing room of the New York Mill by Connor. This was in the nature of an addition to the machinery plant of the New York Mill. The function of this reel was to receive and hold yarn in sections and transmit it to the beamer, so-called. I find that this machine was the property of Connor at the time of bankruptcy, title thereto never having passed in any manner to the defendant Craven, and that at the time of the conversion the fair value of the same was $119.00.

80. Item 111, one Beamer Head. This was a piece of machinery used in connection with dressing yarn in the mill and incidentally used in connection with the Cleveland Dresser Reel in the previous item. It was installed in 1890 in the New York Mill by Connor. It was his property at that time and at the time of his bankruptcy. It had a value of $25.00 at the time of conversion.

81. Items 112 to 116, inclusive, shafting and pulleys, installed in the New York Mill in 1893 and 1894 by Connor, were the property of Connor at the date of his bankruptcy and were at the date of conversion of the value set out in Schedule B.

82. Item 117, one leather belt, installed in 1897 by Connor, used in connection with the shafting and pulleys in the three preceding items, belonging to Connor at the date of bankruptcy and of the value set out in Schedule B.

83. Item 121, Davis & Furber Eleven Rub Rolls, were similar in design and purpose to the rub rolls described in item 108. These were added to the machinery plant of the New York Mill by Connor in 1892. The attachment of these rolls, the character and disposition of rolls displaced are covered by report on item 108, and I find that the property described in this item belonged to the defendant. The value of these rolls at time of installation was $480.00 and at date of bankruptcy $230.00.

84. Item 122, Roy Grinder and Stands, was an addition to the machinery plant of the New York Mill, installed in 1888 by Connor. It was a portable piece of machinery, used in sharpening cards, and moved from one part of the mill to another. It was the property of Connor at the date of bankruptcy and had a value of $38.54 at the date of conversion.

85. Item 123, four Apperley Feeds, were attachments placed upon cards of the defendant in the New York Mill in 1893 by Connor. These were in the nature of additions to the card and also to the machinery plant of the New York Mill. The functions performed by these feeds had been performed by creels prior to their introduction. These creels remained in the New York Mill and were there at date of bankruptcy and were taken possession of and removed by defendant Craven. I find that the defendant Craven did not acquire any title to feeds described in these items; that he converted the same and that the fair value at the date of conversion was $100.00.

86. Item 124, Rankin & McDonald Fitting, for 3120 spindles. This was an attachment placed on the frame of a spinning machine and was an improved device. It was substantially in the nature of an addition to the machinery plant of the New York Mill, being installed in 1899 by Connor. The work which was performed by these spindles had formerly been done by a single band or thread, which was not a mechanical device and of no substantial value. These fittings could be attached and detached without effecting the efficiency of the spinning machine and were in their nature and method of attachment such a part as could be easily severed and which did not become the property of the defendant Craven. They were in the mill at the time of Connor's bankruptcy, belonged to him at that date, and were of the value of $220.00 at date of conversion.

87. Item 125, ten 92 inch Crompton Looms. These looms were purchased in 1897 by Connor and placed in the Weave Room of the New York Mill. The purchase price paid was $112.50 each. It was contended by the defendant, who testified in support of this contention, that these looms were placed in the mill in pursuance of an agreement entered into between Connor and the defend-
40 ant Craven in 1891, at the time the memorandum relating to the twenty Knowles looms described in paragraph 9 was executed and delivered; that as part of that transaction ten more Knowles broad looms were to be purchased by Connor, added to the machinery plant and to become the property of the defendant Craven; and further that Connor had agreed at time of installation in 1897 that these ten Crompton looms should take the place of the ten looms which were not purchased in accordance with the agree-

ment of 1891. I find that this agreement was not made and there was no contract, express or implied, by which these looms became the property of the defendant Craven and that they were the property of Connor at the date of the bankruptcy adjudication. The plaintiff offered evidence to show the value of these looms to be $225.00 each in 1901; that the increase in value between the date of their purchase and 1901 was accounted for by the fact that the purchase price was very small, a great bargain having been secured in their purchase, and in support of this contention offered the testimony of Connor and introduced the statement made by defendant Craven when testifying in a previous case in which the value of these looms was involved, which statement was to the effect that they were worth $250.00 each. The defendant Craven testified in the case at bar that the value of these looms in 1901 was $125.00. From all the evidence in the case I find that the value of these looms was $125.00 each at the date of the conversion by the defendant Craven.

88. Item 126, ten Crompton Box Motions. The Crompton Box Motion was an improved mechanical device attached to a loom. The box motions referred to in this item were installed in the Weave Room of the New York Mill in 1890 by Connor, were attached to looms belonging to the defendant Craven and remained so attached until the removal of the machinery in 1903 by the defendant Craven. The function performed by these box motions was discharged prior to their installation by a device known as a Tappitt Motion. The Crompton Box Motion controlled the shuttles used in the weaving of the cloth in the loom in a manner superior to which they were controlled by the Tappitt Box Motion and were altogether a much more valuable and effective device. These motions were attached to the looms by means of bolts; they were attached and detached without difficulty and at the date when the machinery was removed from the mill by the defendant Craven in 1903 these motions were detached from the looms. It does not appear in evidence that the Tappitt Motions which preceded the motions under consideration were retained in the mill ready for use in case of detachment of
41 the Crompton Motions. These Tappitt Motions, which were removed by Connor, were attached to the looms and part of the machinery admittedly transferred to the defendant Craven in 1885. I find that these motions, while superior and much more valuable than the Tappitt Motions which preceded them, are the property of the defendant and in as much as the preceding motions are not shown to have been preserved and at hand ready for the defendant, that these motions must be considered in the nature of repairs and the defendant is entitled to retain them. I do not find that they passed to the defendant by accession, but rather they passed by virtue of the provision for repair in the absence of a finding that the prior motions were on hand in one of the mills and ready for use at the time the defendant Craven took possession of the machinery in 1901.

89. Item 127, forty-six pairs of Hardaker Temples. These temples were a device used for keeping the cloth in its proper position

on the loom during the process of weaving. It does not appear that a device of any value or consequence was used for this purpose prior to the installation of these temples and I find that they were in substance an addition to the machinery plant; that they were installed in 1891 by Connor and remained his property until the date of the petition in bankruptcy. I find that the fair value of these attachments at the date of the conversion was $115.00.

90. Item 128, thirty-two Tucker Stop Motions, were placed in the Weave Room of the New York Mill in 1888 by Connor. A stop motion was a device attached to the lathe of the loom for the purpose of stopping the process of weaving on the particular loom in the event of the breaking of a thread. To attach these motions it was necessary to make an insertion or slot into the lathe of the loom. This lathe was an iron bar extending the length of the loom. The stop motion was in the nature of an improvement or addition, no device being used in its place prior to its installation. The attachment of this device by reason of the insertion or slot made in the lathe caused a permanent change in the lathe. This change was not of very great consequence in itself, unless it had a tendency to weaken the loom, in support of which proposition there was evidence introduced by the defendant. In view of all the circumstances connected, with the attachment of this device I find that it became the property of the defendant Craven by accession and that he is not liable herein for the value of the same.

91. Item 129, thirty-seven pairs of Temples, were installed in 1891 by Connor in the Weave Room of the New York Mill. Their nature and offices were similar to that indicated for item 42 127 and I find that they remained the property of Connor after their installation until his bankruptcy petition, and that their fair value at the time of the conversion was $92.50.

92. Item 131, one Roy Grinder and Stands, similar to the Roy Grinder set out or described in item 122. It was added to the machinery plant in 1887 by Connor, being installed in the Card Room of the Bigelow Street Mill. I find that it was the property of Connor at the date of the bankruptcy petition and that the value at the date of conversion was $44.00.

93. Item 134, Barker Patent Rubbing Motion, installed in the Card Room of the Bigelow Street Mill in 1893 by Connor, similar to the Barker Rub Motion described in item 108. These motions were attached in a manner similar to that previously described for the motions referred to in item 108 and I find that title to them passed to the defendant and that he is not liable herein for the value of the same.

94. Item 135, four Apperley Feeds, were installed in the Card Room of the Bigelow Street Mill in 1886 by Connor. These Apperley Feeds were similar to those described in item 123, being attached in the same manner to similar machines. I find they were the property of Connor at the time of his bankruptcy petition and were of the value of $120.00 at the date of conversion.

95. Item 136, Rankin & McDonald Fitting for 1056 spindles in the Spinning Room of the Bigelow Street Mill. These were in-

stalled in 1889 by Connor, were similar in nature and design to the fittings described in item 124, being attached in similar manner to similar machines. I find these were the property of Connor at the time of his petition in bankruptcy and had a value of $75.00 at the date of conversion.

96. The values found and set out in Schedule B. are the values of items of property to be removed from Mills in 1901, except as to pipe and fittings, for which items a value to remain in the Mill is found. In regard to a few other items, special considerations prevailed to establish values and these considerations are set out in the treatment of such items herein.

97. All the items included in Schedule B were the property of Connor at the date of his petition in bankruptcy and title thereto passed to Nathan P. Avery as Trustee, and I find further that the property described in this Schedule was sold and transferred to the plaintiff Corbett by said Avery as Trustee, and that the plaintiff acquired title thereto.

98. I find that all the property described in Schedule B was converted by the defendant to his own use in the summer of 1901, prior to August 15th, and that the total value thereof is
43 $3603.12, and that the plaintiff is entitled to recover that amount from the defendant with interest from August 15, 1901, the date of the conversion.

99. I find that the property described in and set out in Schedule C was the property of the defendant and he is not liable for its value herein, as alleged in the plaintiff's declaration.

100. All items in the declaration not specifically treated in Schedule B and C were expressly waived by the plaintiff at the hearing.

JAMES L. DOHERTY, *Auditor.*

EXHIBIT A.

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

I, Robert O. Morris, Clerk of the Superior Court of said Commonwealth of Massachusetts for the county of Hampden, do hereby certify that among the files and records of said Superior Court for the said county of Hampden in the case of Nathan P. Avery, Trustee (In Equity), *vs.* Michael Craven, it is thus contained:

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

In Equity.

NATHAN P. AVERY, Trustee, Complainant,
vs.
MICHAEL CRAVEN, Respondent.

Bill to Set Aside Conveyance.

Your orator, Nathan P. Avery of Holyoke, in said Commonwealth, respectfully represents unto this Honorable Court:

First. That on May 13, 1901, an involuntary petition was filed against James Connor, doing business as Connor Bros., of said Holyoke, in the United States Bankruptcy Court of the District of Massachusetts. That afterwards, by an order of said court, the said James Connor was declared a bankrupt and at duly appointed meetings several persons, firms or corporations duly proved their several and respective claims against the said bankrupt before the Honorable Charles W. Bosworth, referee in said court for a more particular list of said names and amounts reference may be had to the said Bankruptcy court. The total amount of said claims being in excess of Forty Thousand Dollars.

Second. Your orator further shows that on the 3d day of August, 1901, he was duly appointed as trustee of the estate of the said James Connor, bankrupt, by an order of the United States Bankruptcy Court for the District of Massachusetts, and duly qualified as such on the sixth day of August, 1901, by filing his bond in pursuance of such order of appointment.

44 Third. And your orator further shows that he is informed and believes and charges the truth to be upon his information and belief, that the said bankrupt owns and has located in the brick buildings at No. 649 Main street in said Holyoke, called the New York Mills, all the machinery, tools and manufacturing implements located in said mills and all machinery in the mills situated at the corner of Cabot and Bigelow streets in said Holyoke called the Bigelow Street Mills of the Holyoke Water Power Company of great value and all of which property is claimed to be owned by Michael Craven of Springfield in said County. Except the following machinery located on the premises of the Bigelow Street Mill, one set carding machinery (nearest the stairs). Seven narrow looms (stored in said mill). All the machinery in the shoddy mill building so called. Two machines in the stock house.

Fourth. And your orator further represents that the entire purchase price of all of the above described personal property was paid by the said James Connor under a certain bill of sale from Henry Hilton to said James Connor dated February 24, 1882, and recorded in the City Clerk's office of the city of Holyoke, in volume 6, page 34, and that the title was then taken in the name of James Connor,

but that later in the years 1881 and 1885 and 1891 Michael Craven claims that the property was conveyed to him on the payment of certain amounts.

Fifth. And your orator further charges as true that the said Michael Craven did not make the purchase of any of the personal property above mentioned, neither did he pay for the same or any part thereof, as your orator is informed and believes, and your orator charges that all of said property was conveyed and is now held by the said Michael Craven and with the purpose and intention to injure and defraud the creditors of the said James Connor, to hinder and delay them in the collection of their just claims against the said James Connor, and that the property was never delivered to said Craven and said James Connor continued to hold possession, use and enjoy said property and represent to the public that he was possessed of said property and that the same was free of incumbrance. Your orator further represents that said property was taxed in the name of James Connor, insured in the name of James Connor; all these facts being with the knowledge and consent of said respondent; that the entire consideration therefor was paid by the said James Connor and to him in equity all of said property now belongs and if any amount was paid by said Craven to said Connor the same was in effect a loan and that any attempt at a transfer was in effect an attempt to mortgage the said machinery, but never having been recorded is invalid.

45 For as much therefore as your orator is without a remedy in the premises, except in said Court of Equity, and to the end that the said Michael Craven who is made the party respondent to this bill, may be required to make full and direct answer to the same and especially that he may answer and set forth the facts and circumstances attending the said attempted conveyance to him, the said Michael Craven, the purpose of said conveyance and that also upon the hearing thereof the title of all of the said personal property used or in any manner connected with the building above mentioned in said Holyoke and all of the personal property of every name and nature may be decreed to be the property of the said James Connor and that the possession thereof may be decreed to belong to the said complainant, Nathan P. Avery as trustee of said bankrupt estate and for the use and benefit of the creditors who have directed their claims against the said bankrupt; that an injunction be allowed restraining the said respondent from disposing, transferring, incumbrancing or removing the said property beyond the jurisdiction of this Court, or any part thereof, and that the complainant, the said trustee, may be authorized to proceed to take possession of said personal estate and that he be authorized to sell said personal property for the payment and satisfaction of the claims so proven as aforesaid against the said bankrupt, and for the payment of costs and charges legally incurred in and upon the same by the complainant, and that your orator may have such other and further relief in the premises as equity may require, and to this Honorable Court shall seem meet. And after the converting of all such property into cash by complainant, that the said proceeds, after paying the costs

of said proceedings, may be distributed and apportioned among all of said creditors of the said bankrupt entitled thereto.

May it please the Court to grant unto your orator the writ of subpœna to be issued out of and under the seal of said court, to be directed to the said Michael Craven commanding him personally to be and appear before this Honorable Court and then and there to answer all and singular the said premises, and to stand to perform and abide such order and decree therein as to the Court shall seem meet.

NATHAN P. AVERY, *Trustee.*

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

On the 15th day of August, 1901, before me personally
46 came the above named Nathan P. Avery, trustee as aforesaid and made oath that he had read the foregoing bill of complaint by him subscribed and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be on information and belief and as to those matters he believes it to be true.

ARTHUR B. CHAPIN,
Justice of the Peace.

The foregoing bill of complaint was entered in this Court on the fifteenth day of August, in the year of our Lord one thousand nine hundred and one, when the complainant appeared by his attorney, A. B. Chapin, and a subpœna thereon issued requiring the said respondent to appear before our Superior Court at Springfield within our said County of Hampden, on the first Monday of September then next. And an injunction issued as prayed for in said bill by order of Hon. John Aiken, Justice. And the respondent appeared by his attorneys, Gardner & Gardner, and on the twenty-first day of September, in the year last aforesaid, filed his answer, to wit:

"1. The defendant admits the allegations contained in the first and second paragraphs of plaintiff's bill.

2. The defendant admits that he claims to be the owner of certain machinery, tools and manufacturing implements, located in the New York Mills, and all the machinery in the Bigelow Street Mills excepting two self operators, one set of carding machinery, the narrow looms now or lately stored in said mill, and the machinery in the Shoddy Mill building so called, as alleged in the third paragraph of plaintiff's bill, and says he became the owner thereof by purchase from said James Connor in the years 1883, 1885 and 1891.

3. The defendant admits the allegations contained in the fourth paragraph of plaintiff's bill, excepting as otherwise stated by the defendant in his answer to the third paragraph of plaintiff's bill, and excepting further the allegation in said fourth paragraph relating to the purchase price paid by said Conner, the bill of sale and the recording thereof, of which if material the defendant will require proof.

4. The defendant admits the allegations that said Connor continued to use and enjoy said property. Whether said Connor represented to the public that he was possessed of said property and that the same was free of incumbrance as alleged in the fifth paragraph of the plaintiff's bill the defendant is ignorant and can neither admit nor deny but if material will require the plaintiff to offer proof.

47 5. Excepting as the defendant has herein specially admitted the allegations contained in the plaintiff's bill or pleaded ignorance thereof he denies each and every material allegation therein contained."

And on the twenty-fifth day of October, in the year last aforesaid, the complainant filed his replication, to wit: "And now comes the petitioner in the above entitled action and joins issue upon the respondent's answer."

And at the October Sitting, in the year last aforesaid, it was ordered by the Court that Henry C. Bliss be appointed Special Master to hear the parties and examine their vouchers and evidence, reporting so much of the evidence as is necessary to determine any question of law, and make report of the facts thereof to the Court as soon as may be. And on the seventeenth day of February, nineteen hundred and two, the Special Master made his report, to wit:

"The allegations of the plaintiff as to the appointment of Nathan P. Avery as trustee and as to bankruptcy proceedings against James Connor in the United States District Court, are admitted in the defendant's answer. The parties are mainly at issue as to the validity of certain alleged sales of machinery by the bankrupt Connor to the defendant Craven in 1883, 1884, 1885 and 1891. The sale of said property, the payment of consideration, the delivery of the machinery are denied by the plaintiff, and the Court is asked to hold, that the conveyance or sale, if any, from Connor to Craven, was in fact a mortgage, and, not being recorded, is void under the statutes. Upon evidence, I find, that on March 1, 1882, and for some time prior thereto, James Connor, under the firm name of Connor Bros., was engaged in the manufacture of woolen fabrics and shoddy at the corner of Bigelow and Cabot streets, city of Holyoke. The machinery then in said mill consisted mainly of four sets of woolen machinery. On Feb. 26, 1882, said Connor bought of Henry Hilton of New York city, eleven sets of woolen machinery in a mill situated on South Main street, in the city of Holyoke, commonly and herein called the New York Mill. The mill building was then owned by the Holyoke Water Power Company, and Connor came to be the lessee of said mill. The purchase price of the machinery was $50,000, of which $20,000 was paid at the time and the sum of $30,000 was represented by three notes of ten thousand dollars each, secured by mortgage on the property, payable in one, two and three years from date. In August, 1883, Michael Craven, defendant herein, came to be employed by James Connor as superintendent, and remained in that service until April 26, 1884. I find

48 that some time after the purchase of the machinery of the New York Mill, Connor and Craven had a conversation as to Connor's need of money and the Hilton mortgage notes. Both

Connor and Craven testified that Connor agreed to sell to Craven the machinery herein described, embracing the eleven sets in the New York Mill and the four sets in the Cabot Street Mill, for the sum of $26,000, to be paid when the Hilton notes came due, and I find upon the testimony of Connor, Craven and the bookkeeper, G. O. Wood, that Connor, on or about October 12, 1883, gave to Craven a parcel bill receipted by Connor, covering the four sets of machinery in the Bigelow Mill, a copy of which bill is hereto annexed, marked Plaintiff's exhibit 1, and that Craven gave to Connor $6,000, of which $5,000 was by check on Western R. I. Bank and $1,000 was in cash I find from the testimony of the bookkeeper, that he made in the books of Connor Bros. an entry of the receipt of the $6,000, as a credit to James Connor, Craven's name not appearing. The bill above referred to, submitted in evidence, was written by said Wood and signed and receipted by Connor. Upon inquiry of witnesses by counsel, it did not appear by any testimony that any note, contract or agreement other than the said bill was made by the parties at the time, or at any time as to this transaction. I find further that the consideration of $10,000 recited in said bill, was in fact $6,000. Explanation of this was made by Connor in his testimony to the effect that it was a mistake. I find that on or about the fourth of March, 1884, Craven paid to Connor $10,000, and that the money was used to discharge the second Hilton note. The sum of $10,000 was credited to Connor on the books of the concern by the bookkeeper. Six thousand dollars of this amount was paid by Craven in bank notes or cash, which Craven obtained from the Mackintosh Bank, in Holyoke, he going there and drawing the cash, and $4,000 by a New York draft, cashier's draft. The payment was made in the office of Connor Bros., in the presence of the bookkeeper. In answer to an inquiry, bookkeeper Wood testified that no note was given. In reply to an inquiry as to whether any kind of paper was given by Connor to Craven, he answered, 'I don't remember.' Craven testified that a bill of parcels was given with a recital of the fact that the property was subject to a mortgage of $20,000, which bill was given up when a later one was given in 1885. I find that on March 4, 1885, Craven paid to Connor another $10,000 by a draft on the New York bank. I find that on April 6, 1885, Connor gave to Craven a bill of parcel receipted by Connor, submitted in evidence, a copy of which is
49 hereto annexed, marked Plaintiff's Exhibit 2, covering the eleven sets of machinery in the New York Mill, including the tools, shafting, hangings and all machinery of Henry Hilton. From the testimony of the bookkeeper I find that the draft was taken by Connor to New York and exchanged at the office of some commission merchants for checks of the parties there. These later checks were deposited by Connor in the Agawam Bank. I also find that this money was used to pay the last of the Hilton notes. Both Connor and Craven denied in their testimony that there was any mortgage or agreement for resale of any of the property above described. I find from the evidence that Craven at this time and also when the $6,000 was paid in October, 1883, went into the mill with Connor and took hold of the machinery, for the purpose of taking

possession. That the machinery at the time was in place and in actual use by Connor. I also find that Exhibit 2 was made out by bookkeeper Wood, at Connor's direction.

Both Connor and Craven testified that at the time of the sale of the machinery in 1884, it was verbally agreed that Craven should lease the machinery to Connor for a rental equal to 6 per cent. of the purchase price, and that Connor agreed to pay the taxes and the insurance. I find that the sum of $130 a month was paid to Craven for most of the time from that date up to 1901. Towards the last of the period, these amounts or payments being in arrears, notes were made, which were subsequently paid. I find that these payments were entered on the books of Connor Bros. as payments of interest. Bookkeeper Wood was asked in his examination if Craven gave receipts for these payments. He answered "I think he did some time or times." After proof of search for the rects. and failure to find them in the Connor Bros. office, witness was asked, Will you state the contents of the rects. as near as you can remember them? Witness answered "I don't remember distinctly. In a general way I should naturally make them the same way the entries were made on the books reading for interest." I find that the taxes were in fact paid by Connor and were assessed to him or Connor Bros. and that the property was insured as the property of Connor Bros. and that Connor used the machinery up to 1901. Excepting that which was replaced in 1891. The machinery consisted of looms, mules and heavy machines fastened to the floor. The evidence did not disclose that any other person than the bookkeeper, Connor and Craven, know of the sale of the property. I find that there was a machinery account, kept by the bookkeeper in the books of Connor Bros. and that no entry appears therein as to any sale of machinery from Connor to Craven. I find that in 1891, 38 narrow looms were taken out of the mill by Connor and put into the yard and
50 that twenty wide looms were bought, costing forty or forty-five hundred dollars. These were bought to take the place of the looms that were removed. That on March 10, 1891, Connor gave to Craven a parcel bill, a copy of which is hereto annexed, marked Plaintiff exhibit 4, and that Craven for the purpose of taking possession of said property, went into the mill with Connor and took hold of the machines which were then in use in the mill. Craven testified that he consented to the taking of the narrow looms in 1891, on condition that he should own the other looms that went in. There was evidence that in 1883 Connor agreed to keep the machinery in repair. I find that the parties agreed that the wide looms should be held under conditions existing as to the narrow looms. The narrow looms were placed in the yard and after the bankruptcy proceedings, disposed of by the trustee. I find that the money consideration recited in the parcel bill (exhibit 4) was not paid at the time. I find, however, as above stated, that Craven paid to Connor in 1883, 1884 and 1885, the sum of $26,000, as consideration for the sale to him of the machinery herein referred to in exhibits 1 and 2.

There was no evidence that Connor at the time of the sales was in-

solvent or financially embarrassed, except as to said Hilton mortgage notes, and I do not find that there was an agreement for a defeasance as to the sale or an agreement to resell the property to Connor. There were two witnesses called as experts, one by the plaintiff and one by the defendant. Joel S. Webber, a witness called by the plaintiff, was asked the following question. In 1884, in your opinion, what was the fair market value of the woolen machinery in the New York Mill, per set? Witness answered $2500 per set. In answer to the question as to the fair market value of the four sets in the Bigelow Street Mill, witness answered, 'I should call those, perhaps, $3000 per set.' On cross examination witness was asked:

Q. I suppose that if the eleven sets of machinery had to go out of that mill the value would have depreciated very materially, wouldn't it?

A. Yes, sir.

Q. Perhaps you could give some idea of what you would think that machinery would be worth if one had to take it out and sell it and it had to be removed?

A. That is a question that would admit of variation in answer materially, whether it was to be removed from there and put on the market or whether there was a purchaser for it.

Q. Suppose it was to be removed from there and put on the market?

A. That would make a vast difference.

Q. That would be true of the other mill?

A. Yes, sir.

51 Charles C. Webber, a witness called by the defendant, was asked "What in your judgment was a fair valuation of that machinery stored in the mill in 1884, per set or in bulk, (referring to the New York Mill?' The answer was 'Sets are indefinite terms—take the eleven sets, would say a fair valuation would be $21,000, $22,000, or $23,000, not more.' Witness was also asked what he would say its fair market value without reference to the mill, if it was to be put upon the market? Witness answered 'It would be a good deal less than that. Probably it would not bring on the market more than $12,000 or $15,000.' This witness put the value of the four sets of machinery in the Bigelow Street Mill in 1882 at $8000 or $10,000."

And on the thirty-first day of March, nineteen hundred and two, it was ordered by the Court that said bill be dismissed with costs.

Respondent's Costs $21.59.

A true copy of Record.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the Superior Court this sixteenth day of January, in the year of our Lord one thousand nine hundred and six.

[SEAL.] ROBERT O. MORRIS, *Clerk.*

52

SCHEDULE B.

1.	Lathe, 16 inches swing, 8½ feet between centres...	$60.00
2.	Lathe, 16 inches swing, 8½ feet between centres..	60.00
3.	Upright drill (Bausch).....	44.00
4.	20 Flat and twist drills.....	1.80
7.	Shafting, 10 feet long and 2 inches in diameter..	2.34
8.	Wooden pulley, 8 inches face 28 inches in diameter.	3.00
9.	Wooden pulley in archway, 8 inches face, 24 inches dia	2.46
10.	1 Shaft 8 feet long 2⅜ inches dia., 2 iron flanges..	2.85
11.	1 Shaft 8 feet long 2 inches in diameter.....	2.00
12.	Iron flange pulley 10 inches face, 10 inches diameter	1.93
13.	Ceiling bracket, 2⅜ inches bore, 3 iron braces....	1.28
14.	Wooden pulley, 24 inches diameter, 8 inches face.	2.46
15.	1 6-inch double belt, 14 feet long.....	5.60
16.	Shaft 9 feet long, 2 pulleys, 7 inches face, 8 inches diameter	2.85
17.	Shaft 22 feet long.....	7.84
18.	1 48-inch fan	28.50
19.	14-inch drop hanger for fan shaft in old dye house.	3.12
20.	2 pedestal boxes for fan shaft.....	2.48
21.	2 16-inch drop hangers.....	6.54
22.	Single belt, 40 feet 9 inches long, 6 inches wide...	8.15
23.	1 48-inch fan.....	28.50
24.	144 feet full row cold rolled shafting 1⅞ inches dia	32.00
25.	32 wooden pulleys with flanges.....	96.00

53

26.	4 wooden pulleys, 8 inches face, 16 inches diameter	6.25
27.	Iron pulley, 8 inch face, 16 inch diameter.....	2.70
28.	Cold rolled shafting 10 feet long by 1 7-16.....	1.40
29.	Wooden pulley 12 inches diameter and 2 pedestal boxes	1.20
30.	4 wooden driving pulleys 28 inches dia., 6 inch face	12.50
31.	18-8 inch drop hangers.....	39.90
32.	Belt 28 feet long, 6 inches wide.....	5.60
33.	Belt 28 feet long, 6 inches wide.....	5.60
34.	3 wall boxes for shafting.....	3.20
35.	Double main driving belt 26 feet long 6 inches wide	10.40
36.	228 feet ¼ inch gas pipe.....	1.22
37.	50 feet 1¼ inch gas pipe.....	.62
38.	40 ¼ inch gas cocks }	
39.	1 1¼ inch gas cocks}	5.33
40.	1 1½ steam valve (Jenks).....	1.00

41.	228 feet 1-inch steam pipe and 3 large headers	28.00
42.	Measuring reel complete 26 feet long ½ inch braces	14.70
43.	Speck dye machine complete	75.00
44.	Bausch friction pulley 30 inches dia., 8 inches face	16.34
45.	Rubber driving belt	7.60
46.	Wooden driving pulley 24 inch dia., 8 inch face	2.46
47.	3 2½ inch Chapman valve	6.00
48.	Shaft 38 feet long by 2¾	18.31
49.	Iron pulley, 30 inch dia., 12 inch face	8.17
50.	Rubber belt 9 feet 3 inches long, 3 inches wide	.73
51.	2 reels 2¾ feet dia., 5 feet 7½ inches long	20.00
52.	1 large dye tub and reel	100.00
53.	Rubber driving belt, 17 feet 10 inches long, 6 inches wide	3.46
54.	Shafting 40 feet long, 2⅜ diameter	14.30
55.	5 hangers 12 inches drop	14.95
56.	Pedestal box	1.25
57.	Wooden pulley, 14 inches dia., 10 inches face	1.57
58.	Wooden pulley, 14 inches dia., 10 inches face	1.57
59.	Counter belt, 29 feet 2½ inches long, 10 inches wide	11.73
60.	Water pipe, 24 feet long, 2½ inches diameter	1.40
54		
61.	2 2½ inch Chapman iron gate valves	4.00
62.	30 feet 1½ inch steam pipe, 2 1½ inch Jenks globe valves	2.90
63.	25 feet ⅜ inch gas pipes and 3 gas cocks	.65
64.	1 dye tub and reel, 4 feet long, 3 inches wide	5.00
65.	1 cloth washer complete	75.00
66.	1 4 inch Chapman Iron gate valve	3.80
67.	2 2½ inch Chapman gate valves	4.00
68.	Counter shaft, 10 feet 2 inches long, 2 inches diameter	2.62
69.	2 12 inch drop hangers	4.77
70.	1 16 inch wooden pulley, 10 inch face	1.83
71.	2½ water pipe, 8 feet 4 inches long	.10
72.	1 centrifugal pump complete	60.00
73.	16 feet 6 inches wrought iron suction pipe	2.65
74.	10 feet 5 inches delivery pipe	1.59
75.	Counter shaft 12 feet long, 2⅜ inches diameter	5.70
76.	Iron clamp pulley 36 inches dia., 10 inches face	10.13
77.	6 ply rubber belt 21 feet 10 inches long, 10 inches wide	8.80
78.	Double leather belt 21 feet 10 inches long, 10 inches wide	14.65
79.	Wooden pulley, 10 inches face, 16 inches diameter.	1.83
80.	Wooden pulley, 10 inches face, 16 inches diameter.	1.83
81.	Iron tank, 4 feet long, 30 inches high, 30 inches wide	17.50

88.	2 fulling mills	75.00
89.	40 feet 4 inch double leather beltings	10.37
90.	2 20 inch iron pulleys, 10 inch face	7.84
91.	Automatic measuring reel	70.00
92.	Cloth folder	15.00
93.	Wooden pulleys, 8 inch face	1.05
97.	4 36 inch fans	76.00
98.	Shaft, 22 feet long, 2⅜ inches diameter	7.84
99.	Clamp pulley, 24 inches diameter, 12 inches face	6.22
100.	Wooden pulley, 18 inches diameter, 10 inches face	2.05
101.	Belt, 34 feet 9 inches long, 10 inches wide	12.95
102.	Leather belt single, 20 feet 4 inches long, 6 inches wide	4.50
103.	2 iron pulleys, 12 inches diameter, 2 inches face	2.55

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104.	Pulley, 14 inches diameter, 10 inches face, iron	2.63
105.	4 iron pulleys, 24 inches dia., 4 inches face	12.90
106.	48 feet 3 inch double belt	5.08
110.	Cleveland dresser reel	119.00
111.	Beamer head	25.00
112.	Shafting 16 feet 2⅜ inches diameter	5.70
115.	Wooden pulley 24 inches diameter, 6 inches face	2.04
116.	Wooden pulley 16 inches diameter, 4 inches face	1.09
117.	Single leather belt, 28 feet long, 6 inches wide	7.82
122.	Roy 40 x 13 grinder and stands	38.54
123.	4 Apperley feeds	100.00
124.	Ranken & McDonald fitting of 3120 spindles	220.06
125.	10 92 inch Crompton looms	1250.00
127.	46 pairs Hardaker Temples	115.00
129.	37 pairs Temples	92.50
131.	1 48 x 13 Roy grinder and stands	40.00
135.	4 Apperley feeds	120.00
136.	Ranken & MacDonald fitting of 1056 spindles	75.00
		$3603.12

SCHEDULE C.

5. 4 tons, estimated, of finished castings, duplicate parts of various kinds of woolen machines.
6. 7 tons, estimated, unfinished castings, duplicate parts of various kinds of woolen machines.
83. 198 feet 2 inch steam pipe.
84. 1 2 inch Jenks globe valve, brass.
85. 80 feet 2 inch water pipe and 1 2 inch Chapman gate valve, brass.
86. 50 feet 1¼ steam pipe.
96. 3 sets of brushes for gigs.
107. 22 wooden pulleys, 14 inches diameter, 10 inches face.

56

108. 3 sets Barker rub rolls.
109. 11 wooden pulleys, 10 inches diameter, 10 inches face.
121. 6 Davis & Furber eleven rub rolls.
126. 10 Crompton box motions.
128. 32 Tucker stop motions.
134. 1 48-inch Barker patent rubbing motion.

On the seventh day of June, nineteen hundred and six, said Charles H. Beckwith disappeared, as attorney for said defendant, which disappearance is in the words as follows, to wit:—

Disappearance.

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

Superior Court.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

Withdrawal of Defendant's Attorney.

In the above entitled case I hereby withdraw my appearance for the defendant.

CHARLES H. BECKWITH.

And on the eleventh day of said June said attorney, Charles H. Beckwith entered his appearance which is in the words as follows, to wit:

Appearance.

HAMPDEN, *ss:*

Superior Court.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

In the above entitled case I appear for the defendant.

CHARLES H. BECKWITH.

57 And at the June Sitting, nineteen hundred and six, the case was committed to a jury sworn to try the same, who returned their verdict therein, which is in the words as follows, to wit:

Verdict.

HAMPDEN, *ss:*

Superior Court, June Sitting, A. D. 1906.

WILLIAM J. CORBETT, Plaintiff,

—

MICHAEL CRAVEN, Defendant.

The Jury find for the Plaintiff and assess damages in the sum of Four Thousand Six Hundred Ninety-six and 02/100 Dollars.

HERBERT S. MARTIN, *Foreman.*

Whereupon the defendant, alleged sundry exceptions to the opinions and rulings of the Court, which being found conformable to the truth were allowed and signed by the presiding Judge, and the questions were transmitted to the Supreme Judicial Court for consideration, which exceptions are in the words as follows, to wit:

58 COMMONWEALTH OF MASSACHUSETTS,

Hampden, ss:

Superior Court, June Sitting, 1906.

WILLIAM J. CORBETT

vs.

MICHAEL CRAVEN.

Defendant's Bill of Exceptions.

This is an action of tort for the conversion of certain personal property, tried before Hitchcock, J. and a jury. The writ and pleadings are made a part hereof.

From a date prior to October 12, 1883, to June 18, 1901, James Connor of Holyoke was engaged in the manufacture of woolen cloth and shoddy in two mills in that city known as the New York Mill and the Bigelow Street Mill. The New York Mill contained eleven sets of woolen machinery. A set of woolen machinery is a set of cards together with the necessary complement of looms, spinning, finishing machinery, etc. The quantity and kind of machinery constituting the complement of a set of cards is determined by the character of the required product in any given case. In the case at bar changes in the product from time to time made necessary or expedient the purchase and addition of some of the machinery described in the plaintiff's declaration. The Bigelow Street Mill contained four sets of woolen machinery. October 12, 1883, Connor sold to Michael Craven, the defendant, four sets of woolen machinery in the Bigelow Street Mill evidenced by a bill of sale, of which the following is a copy.

59 HOLYOKE, MASS., *Oct.* 12, 1883.

Michael Craven Bought of Connor Bros.

4 Entire Sets Woolen Machinery stored in Woolen Mill, corner of Cabot & Bigelow Streets for Ten Thousand Dollars ..... $10,000.

Received payment, CONNOR BROTHERS.

April 6, 1885, Connor sold to Craven eleven sets of woolen machinery including all the machinery, tools, shafting, etc., then owned by him in the New York Mill, evidenced by a bill of sale of which the following is a copy.

HOLYOKE, MASS., *April* 6, 1885.

Michael Craven, South Deerfield, Mass., Bought of Connor Brothers.

Eleven sets of Woolen Machinery for Twenty Thousand Dollars $20,000

and other valuable consideration, the same being free from all incumbrances and includes all of the machinery, tools, shafting and hangers, bought of Henry Hilton, now on the premises described hereafter, with all machinery and improvements added thereto since said purchase. Said machinery is at present stored in the brick woolen mill buildings owned by the Holyoke Water Power Co., situated on Main street, Holyoke, and known as the New York Mill.

Received payment, CONNOR BROS.

Immediately after the sale of April 6, 1885, Craven leased to Connor by oral agreement the property acquired by him by these purchases upon Connor's oral agreement to pay a certain annual rental, and also to pay taxes, insurance and to make repairs. The defendant claimed at the trial that, in addition, Connor agreed to keep up the depreciation, or to keep depreciation good. This was denied by the plaintiff. Connor continued to use the property as such lessee until his bankruptcy in 1901. March 10, 1891, Connor bought twenty Knowles broad looms and installed ten of them in the Bigelow Street Mill, and ten in the New York Mill, and on the same date sold them to Craven, as evidenced by a bill of sale, of which the following is a copy.

60 HOLYOKE, MASS., *March* 10, 1891.

Michael Craven, Bought of Connor Bros.

10 "Knowles" Broad Looms, $275..... $2,750
stored for said M. Craven in Bigelow Street Woolen Mills, Cor. of Cabot St.

10 "Knowles" Broad Looms, $275..... $2,750
stored for said M. Craven in New York Mills on Main St. Cor. of South St.

$5,500

Received payment, CONNOR BROS.

June 18, 1901, Connor was duly adjudicated a bankrupt.

August 3, 1901, Nathan P. Avery, Esquire, of Holyoke, was appointed trustee in bankruptcy of Connor's estate, and August 6, 1901, he qualified by filing bond. August 15, 1901, Mr. Avery, as trustee as aforesaid brought a bill in equity against the defendant Craven in the Superior Court of this Commonwealth, and a copy of the record of that action is annexed hereto marked "A" and is made a part hereof. The bills of sale therein referred to, are the same as those hereinbefore set forth. September 18, 1901, Avery as trustee sold to William J. Corbett, the plaintiff, all the wooden machinery of the estate not covered by said bills of sale, which included the machinery for the conversion of which this suit is brought. At the time of making this sale, the trustee was almost wholly ignorant of the amount of machinery not covered by said bills of sale.

Subsequent to April 6, 1885, and prior to June 18, 1901, Connor purchased and added to the machinery in the two mills from time to time certain machines, parts of machines and other manufacturing implements besides the twenty Knowles broad looms heretofore referred to, and all of the property sued for in this action is property so added subsequent to April, 1885. Such additions were of less value than the machinery conveyed to Craven by the aforesaid sales. All the machinery in the shoddy mill building at the Bigelow Street Mill and some of the machinery in the woolen mill building at the same mill belonged to Connor and passed to Avery, trustee, and never belonged to Craven, but was sold by said trustee before the sale to Corbett hereinbefore referred to.

61 At the trial the parties agreed in writing to the following facts:

"1. Mr. Avery never acquired any interest or title in the goods sued for other than such interest or title as he acquired by virtue of being appointed trustee in bankruptcy of Connor.

2. All the property mentioned in the declaration was from the date of Connor's adjudication in bankruptcy to the date of the dismissal of the equity suit, Avery, Trustee *vs.* Craven, located in the buildings and rooms therein specified in the declaration, and none of the property so mentioned was included in the exceptions set out in paragraph numbered three of the bill of complaint in said equity suit.

3. Such title as the plaintiff has was acquired by virtue of a sale, Sept. 18, 1901, by said Avery as trustee, of all the machinery of the bankrupt estate, not covered by the bills of sale given by Connor to Craven, the defendant, Oct. 12, 1883, April 6, 1885 and March 10, 1891.

4. Items 5, 6, 82, 94, 95, 113, 114, 118, 119, 120, 130, 132 and 133 shall be stricken from the declaration."

The bills of sale mentioned in the 3rd paragraph of facts agreed to above, are the same as those hereinbefore set forth.

At the trial it was contended by the defendant in the first instance that all the property described in the declaration passed to him by virtue of the condition in the contract of letting that Connor should keep the depreciation good. It was further contended by the de-

fendant that at each of the different times when additions were made to the plant by Connor, certain oral agreements were made by Connor with the defendant, by virtue of which the defendant gained title to all of the property in controversy.

The defendant requested the Court to make the following rulings:

"1. On all of the evidence the plaintiff cannot recover.

2. The record of Avery Trustee *v.* Craven and the agreed facts preclude the plaintiff from recovering.

3. The decree in Avery Trustee *vs.* Craven constitutes a bar to the plaintiff's recovery in this action.

4. The decree in Avery Trustee *vs.* Craven is a conclusive determination that Avery, as against Craven, did not own the property in question in this suit and is binding on Corbett who purchased from Avery while that suit was pending.

62 5. The decree in Avery Trustee *vs.* Craven is conclusive by way of estoppel that Avery, as against Craven, did not own the property in question in this suit and also concludes Corbett who purchased from Avery while that suit was pending."

The defendant's requests for rulings were refused and the defendant duly excepted.

The case was submitted to the jury under instructions not excepted to and a verdict rendered for the plaintiff, for $4,696.02.

The defendant now prays that his exceptions to the refusal of the Court to make rulings as above set forth may be allowed.

MICHAEL CRAVEN,
By His Attorney, CHARLES H. BECKWITH.

Allowed.

LORANUS E. HITCHCOCK, *J. S. C.*

"A."

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

I, Robert O. Morris, Clerk of the Superior Court of said Commonwealth of Massachusetts for the county of Hampden, do hereby certify that among the files and records of said Superior Court for the said county of Hampden, in the case of Nathan P. Avery, Trustee (In Equity), *vs.* Michael Craven, it is thus contained:

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

In Equity.

NATHAN P. AVERY, Trustee, Complainant,
vs.
MICHAEL CRAVEN, Respondent.

63 *Bill to Set Aside Conveyance.*

Your orator, Nathan P. Avery, of Holyoke, in said Commonwealth, respectfully represents unto this Honorable Court:

First. That on May 13, 1901, an involuntary petition was filed against James Connor, doing business as Connor Bros. of said Holyoke in the United States Bankruptcy Court of the District of Massachusetts. That afterwards, by an order of said Court, the said James Connor was declared a bankrupt and at duly appointed meetings several persons, firms or corporations duly proved their several and respective claims against the said bankrupt before the Honorable Charles W. Bosworth, referee in said court for a more particular list of said names and amounts reference may be had to the said Bankruptcy Court. The total amount of said claims being in excess of Forty Thousand Dollars.

Second. Your orator further shows that on the 3d day of August, 1901, he was duly appointed as trustee of the estate of the said James Connor, bankrupt, by an order of the United States Bankruptcy Court for the District of Massachusetts, and duly qualified as such on the sixth day of August, 1901, by filing his bond in pursuance of such order of appointment.

Third. And your orator further shows that he is informed and believes and charges the truth to be upon his information and belief, that the said bankrupt owns and has located in the brick buildings at No. 649 Main street in said Holyoke, called the New York Mills, all the machinery, tools and manufacturing implements located in said mills and all machinery in the mills situated at the corner of Cabot and Bigelow streets in said Holyoke called the Bigelow Street Mills of the Holyoke Water Power Company, of great value and all of which property is claimed to be owned by Michael Craven of Springfield in said county. Except the following machinery located on the premises of the Bigelow Street Mill, one set carding machinery (nearest the stairs). Seven narrow looms (stored in said mill). All the machinery in the shoddy mill building so called. Two machines in the stock house.

Fourth. And your orator further represents that the entire purchase price of all of the above described personal property was paid by the said James Connor under a certain bill of sale from Henry Hilton to said James Connor dated February 24, 1882, and recorded in the City's Clerk's Office of the city of Holyoke, in volume 6, page

34, and that the title was then taken in the name of James
64 Connor, but that later in the years 1881 and 1885 and 1891 Michael Craven claims that the property was conveyed to him on the payment of certain amounts.

Fifth. And your orator further charges as true that the said Michael Craven did not make the purchase of any of the personal property above mentioned, neither did he pay for the same or any part thereof, as your orator is informed and believes and your orator charges that all of said property was conveyed and is now held by the said Michael Craven and with the purpose and intention to injure and defraud the creditors of the said James Connor, to hinder and delay them in the collection of their just claims against the said James Connor, and that the property was never delivered to said Craven and said James Connor continued to hold possession, use and enjoy said property and represent to the pubile that he was possessed of said property and that the same was free of incumbrance. Your orator further represents that said property was taxed in the name of James Connor, insured in the name of James Connor; all these facts being with the knowledge and consent of said respondent; that the entire consideration therefor was paid by the said James Connor and to him in equity all of said property now belongs and if any amount was paid by said Craven to said Connor the same was in effect a loan and that any attempt at a transfer was in effect an attempt to mortgage the said machinery but never having been recorded is invalid.

For as much, therefore, as your orator is without a remedy in the premises, except in said Court of Equity, and to the end that the said Michael Craven, who is made the party respondent to this bill, may be required to make full and direct answer to the same and especially that he may answer and set forth the facts and circumstances attending the said attempted conveyance to him, the said Michael Craven, the purpose of said conveyance and that also upon the hearing thereof the title of all of the said personal property used or in any manner connected with the building above mentioned in said Holyoke and all of the personal property of every name and nature may be decreed to be the property of the said James Connor and that the possession thereof may be decreed to belong to the said complainant, Nathan P. Avery, as trustee of said bankrupt estate and for the use and benefit of the creditors who have directed their claims against the said bankrupt; that an injunction be allowed restraining the said respondent from disposing, transferring, incumbrancing or removing the said property beyond the jurisdcition of this court, or any part thereof, and that the complainant, the said trustee, may be authorized to proceed to take possession of said personal estate and
that he be authorized to sell said personal property for the
65 payment and satisfaction of the claims so proven as aforesaid against the said bankrupt, and for the payment of costs and charges legally incurred in and upon the same by the complainant, and that your orator may have such other and further relief in the premises as equity may require and to this Honorable Court shall seem meet. And after the converting of all of such property

into cash by complainant, that the said proceeds, after paying the costs of said proceedings, may be distributed and apportioned among all of said creditors of the said bankrupt entitled thereto.

May it please the Court to grant unto your orator the writ of subpœna to be issued out of and under the seal of said Court, to be directed to the said Michael Craven commanding him personally to be and appear before this Honorable Court and then and there to answer all and singular the said premises and to stand to perform and abide such order and decree therein as to the Court shall seem meet.

NATHAN P. AVERY, *Trustee.*

COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

On the 15th day of August, 1901, before me personally came the above named Nathan P. Avery, trustee as aforesaid and made oath that he had read the foregoing bill of complaint by him subscribed and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be on information and belief and as to those matters he believes it to be true.

ARTHUR B. CHAPIN,
Justice of the Peace.

The foregoing bill of complaint was entered in this Court on the fifteenth day of August, in the year of our Lord one thousand nine hundred and one, when the complainant appeared by his attorney, A. B. Chapin, and a subpœna thereon issued requiring the said respondent to appear before our Superior Court at Springfield within our said county of Hampden, on the first Monday of September then next. And an injunction issued as prayed for in said bill by order of Hon. John A. Aiken, Justice. And the respondent appeared by his attorneys, Gardner & Gardner, and on the twenty-first day of September, in the year last aforesaid, filed his answer, to wit: "1. The defendant admits the allegations contained in the first and second paragraphs of plaintiff's bill. 2. The defendant admits that he claims to be the owner of certain machinery, tools and
66 manufacturing implements, located in the New York Mills, and all the machinery in the Bigelow Street Mills excepting two self operators, one set of carding machinery, the narrow looms now or lately stored in said mill, and the machinery in the Shoddy Mill building so called, as alleged in the third paragraph of plaintiff's bill, and says he became the owner thereof by purchase from said James Connor in the years 1883, 1885 and 1891. 3. The defendant admits the allegations contained in the fourth paragraph of plaintiff's bill, excepting as otherwise stated by the defendant in his answer to the third paragraph of plaintiff's bill, and excepting further the allegation in said fourth paragraph relating to the purchase price paid by said Connor, the bill of sale and the recording thereof, of which if material the defendant will require proof. 4. The defendant admits the allegations that said Connor continued to use and enjoy said property. Whether said Connor represented to the public

that he was possessed of said property and that the same was free of incumbrance as alleged in the fifth paragraph of the plaintiff's bill the defendant is ignorant and can neither admit nor deny but if material, will require the plaintiff to offer proof. 5. Excepting as the defendant has herein specially admitted the allegations contained in the plaintiff's bill or pleaded ignorance thereof he denies each and every material allegation therein contained." And on the twenty-fifth day of October, in the year last aforesaid, the complainant filed his replication, to wit: "And now comes the petitioner in the above entitled action and joins issue upon the respondent's answer." And at the October Sitting, in the year last aforesaid, it was ordered by the Court that Henry C. Bliss be appointed Special Master to hear the parties and examine their vouchers and evidence, reporting so much of the evidence as is necessary to determine any questions of law, and make report of the facts thereof to the Court as soon as may be. And on the seventeenth day of February, nineteen hundred and two, the Special Master made his report, to wit: "The allegations of the plaintiff as to the appointment of Nathan P. Avery as trustee and as to bankruptcy proceedings against James Connor in the United States District Court, are admitted in the defendant's answer. The parties are mainly at issue as to the validity of certain alleged sales of machinery by the bankrupt Connor to the defendant Craven in 1883, 1884, 1885 and 1891. The sale of said property, the payment of consideration, the delivery of the machinery are denied by the plaintiff, and the Court is asked to hold, that the conveyance or sale if any, from Connor to Craven, was in fact a mortgage, and, not being recorded, is void under the statutes. Upon evidence, I find, that on March 1, 1882, and for some time prior thereto, James Connor, under the firm name of Connor
67 Bros. was engaged in the manufacture of woolen fabrics and shoddy at the corner of Bigelow and Cabot streets, city of Holyoke. The machinery then in said mill consisted mainly of four sets of woolen machinery. On Feb. 26, 1882, said Connor bought of Henry Hilton of New York City, eleven sets of woolen machinery in a mill situated on South Main street, in the city of Holyoke, commonly and herein called the New York mill. The mill building was then owned by the Holyoke Water Power Company and Connor came to be the lessee of said mill. The purchase price of the machinery was $50,000, of which $20,000 was paid at the time and the sum of $30,000 was represented by three notes of ten thousand dollars each, secured by mortgage on the property, payable in one, two and three years from date. In August, 1883, Michael Craven, defendant herein, came to be employed by James Connor as Superintendent and remained in that service until April 26, 1884.

I find that sometime after the purchase of the machinery of the New York Mill, Connor and Craven had a conversation as to Connor's need of money and the Hilton mortgage notes. Both Connor and Craven testified that Connor agreed to sell to Craven the machinery herein described, embracing the eleven sets in the New York Mill and the four sets in the Cabot Street Mill for the sum of $26,000, to be paid when the Hilton notes came due, and I find

upon the testimony of Connor, Craven and the bookkeeper, G. O. Wood, that Connor, on or about October 12, 1883, gave to Craven a parcel bill receipted by Connor, covering the four sets of machinery in the Bigelow Mill, a copy of which bill is hereto annexed, marked Plaintiff exhibit 1, and that Craven gave to Connor $6,000, of which $5,000 was by check on Western R. I. Bank and $1,000 was in cash. I find from the testimony of the bookkeeper, that he made in the books of Connor Bros. an entry of the receipt of the $6,000 as a credit to James Connor. Craven's name not appearing. The bill above referred to, submitted in evidence, was written by said Wood and signed and receipted by Connor. Upon inquiry of witnesses by counsel, it did not appear by any testimony that any note, contract or agreement other than the said bill was made by the parties at the time, or at any time as to this transaction. I find further that the consideration of $10,000, recited in said bill, was in fact $6,000. Explanation of this was made by Connor in his testimony to the effect that it was a mistake. I find that on or about the fourth of March, 1884, Craven paid to Connor $10,000, and that the money was used to discharge the second Hilton note. The sum of $10,000 was credited to Connor on the books of the concern by the bookkeeper. $6,000 of this amount was paid by Craven in bank notes or cash, which Craven obtained from the Mackintosh Bank, in Holyoke, he going there and drawing the cash, and $4,000 by a New York draft, cashier's draft. The payment was made in
68 the office of Connor Bros. in the presence of the bookkeeper.

In answer to an inquiry, bookkeeper Wood testified that no note was given. In reply to an inquiry as to whether any kind of paper was given by Connor to Craven he answered "I don't remember." Craven testified that a bill of parcels was given with a recital of the fact that the property was subject to a mortgage of $20,000, which bill was given up when a later one was given in 1885. I find that on March 4, 1885, Craven paid to Connor another $10,000, by a draft on the New York bank. I find that on April 6, 1885, Connor gave to Craven a bill of parcels receipted by Connor, submitted in evidence, a copy of which is hereto annexed, marked plaintiff exhibit 2, covering the eleven sets of machinery in the New York Mill, including the tools, shafting, hangings and all machinery of Henry Hilton. From the testimony of the bookkeeper I find that the draft was taken by Connor to New York and exchanged at the office of some commission merchants for checks of the parties there. These later checks were deposited by Connor in the Agawam Bank. I also find that this money was used to pay the last of the Hilton notes. Both Connor and Craven denied in their testimony that there was any mortgage or agreement for a resale of any of the property above described. I find from the evidence that Craven at this time, and also when the $6,000 was paid in October, 1883, went into the mill with Connor and took hold of the machinery, for the purpose of taking possession. That the machinery at the time was in place and in actual use by Connor. I also find that exhibit 2 was made out by bookkeeper Wood, at Connor's direction. Both Connor and Craven testified that at the time

of the sale of the machinery in 1884, it was verbally agreed that Craven should lease the machinery to Connor for a rental equal to 6 per cent. of the purchase price and that Connor agreed to pay the taxes and the insurance. I find that the sum of $130 a month was paid to Craven for most of the time from that date up to 1901. Towards the last of the period, these amounts or payments being in arrears, notes were made, which were subsequently paid. I find that these payments were entered on the books of Connor Bros. as payments of interest. Bookkeeper Wood was asked in his examination if Craven gave receipt for these payments. He answered "I think he did some time or times." After proof of search for the receipts and failure to find them in the Connor Bros. office, witness was asked, "Will you state the contents of the receipts as near as you can remember them?" Witness answered, "I don't remember distinctly. In a general way I should naturally make them the same the entries were made on the books reading for interest." I find that the taxes were in fact paid by Connor and were assessed to him or Connor Bros. and that the property was insured as the property of Connor Bros. and that Connor used the machinery up to 1901. Excepting that which was replaced in 1891. The
69 machinery consisted of looms, mules and heavy machines fastened to the floor. The evidence did not disclose that any other person than the bookkeeper, Connor and Craven, knew of the sale of the property. I find that there was a machinery account, kept by the bookkeeper in the books of Connor Bros. and that no entry appears therein as to any sale of machinery from Connor to Craven. I find that in 1891, 38 narrow looms were taken out of the mill by Connor and put into the yard, and that 20 wide looms were bought, costing forty or forty-five hundred dollars. These were bought to take the place of the looms that were removed. That on March 10, 1891, Connor gave to Craven a parcel bill, a copy of which is hereto annexed, marked plaintiff exhibit 4, and that Craven for the purpose of taking possession of said property, went into the mill with Connor and took hold of the machines which were then in use in the mill. Craven testified that he consented to the taking of the narrow looms in 1891, on condition that he should own the other looms that went in. There was evidence that in 1883 Connor agreed to keep the machinery in repair. I find that the parties agreed that the wide looms should be held under conditions existing as to the narrow looms. The narrow looms were placed in the yard and after the bankruptcy proceedings disposed of by the trustee. I find that the money consideration recited in the parcel bill (exhibit 4) was not paid at the time. I find, however, as above stated, that Craven paid to Connor in 1883, 1884 and 1885, the sum of $26,000, as consideration for the sale to him of the machinery herein referred to in exhibits 1 and 2. There was no evidence that Connor at the time of the sales was insolvent or financially embarrassed, except as to said Hilton mortgage notes, and I do not find that there was an agreement for a defeasance as to the sale or an agreement to resell the property to Connor. There were two witnesses called as experts, one by plaintiff and one by defendant. Joel S. Webber,

a witness called by the plaintiff, was asked the following question. In 1884, in your opinion, what was the fair market value of the woolen machinery in the New York Mill, per set? Witness answered $2,500 per set. In answer to the question as to the fair market value of the four sets in the Bigelow Street Mill, witness answered, I should call those, perhaps, $3,000 per set."

On cross-examination, witness was asked,

Q. I suppose that if the eleven sets of machinery had to go out of that mill the value would have depreciated very materially, wouldn't it?

A. Yes sir.

Q. Perhaps you could give some idea of what you would think that machinery would be worth if one had to take it out and sell it and it had to be removed?

A. That is a question that would admit of variation in answer materially, whether it was to be removed from there and put on the market, or whether there was a purchaser for it.

Q. Suppose it was to be removed from there and put on the market?

A. That would make a vast difference.

Q. That would be true of the other mill?

70 A. Yes sir. Chas. C. Webber, a witness called by the defendant was asked "What in your judgment was a fair valuation of that machinery stored in the mill in 1884, per set or in bulk (referring to the New York Mill)? The answer was "Sets are indefinite terms, take the eleven sets, would say a fair valuation would be $21,000, $22,000, or $23,000, not more." Witness was also asked what he would say its fair market value without reference to the mill, if it was to be put upon the market? Witness answered "It would be a good deal less than that. Probably it would not bring on the market more than $12,000 or $15,000." This witness put the value of the four sets of machinery in the Bigelow Street Mill in 1882 at $8,000 or $10,000. And on the thirty-first day of March, nineteen hundred and two, it was ordered by the Court that said bill be dismissed with costs.

Respondent's costs $21.59.

And on the eighteenth day of October, nineteen hundred and six, a rescript was received from the Supreme Judicial Court aforesaid, which is in the words as follows, to wit:

Rescript.

COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, October 16, 1906.

In the case of William J. Corbett *vs.* Michael Craven, pending in the Superior Court for the County of Hampden.

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court; viz:
Exceptions sustained.
By the Court,

C. H. COOPER, *Clerk.*

October 16, 1906.

71 Endorsed: Brief statement of the grounds and reasons of the decision. The decree in the suit in equity is a bar to the plaintiff's claim.

On the twenty-first day of February, nineteen hundred and seven, said Charles H. Beckwith, disappeared as attorney for said defendant, which disappearance is in the words as follows, to wit:

Disappearance.

HAMPDEN, *ss:*

Superior Court.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

In the above entitled case I hereby withdraw my appearance for the defendant.

CHARLES H. BECKWITH.

On the twentieth day of March, nineteen hundred and seven, Gardner & Gardner appeared as attorneys for said defendant.

On the sixth day of May, nineteen hundred and seven, the plaintiff filed a motion to amend his declaration, which — in the words as follows, to wit:

Motion to Amend Declaration.

HAMPDEN, *ss:*

Superior Court.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

Plaintiff's Motion to Amend His Declaration.

And now comes the plaintiff and moves for leave to amend his declaration by adding thereto the following words:
And the plaintiff says that said goods and chattels were the property of one James Connor, who was adjudicated a bankrupt by the District Court of the United States for the District of Massachusetts

June 18, 1901, that on August 3, 1901, Nathan P. Avery, of
72 Holyoke, was duly appointed trustee in bankruptcy of the estate of said Connor; that on August 6, 1901, the said Avery duly filed bond and duly qualified as such trustee; that on September 18, 1901, the said plaintiff acquired title to said goods and chattels by purchase from said Avery as trustee aforesaid, the said Avery being duly authorized by said District Court to make sale of said goods and chattels; and that the plaintiff in this action, relying upon such title acquired as aforesaid from said Avery, specially sets up and claims that said title was acquired under an authority exercised under the United States within the meaning of Section 709 of the Revised Statutes of the United States.

By His Attorney, C. T. CALLAHAN.

Endorsed on back as follows: Allowed. John C. Crosby, J. S. C.

On said sixth day of May the plaintiff filed his replication, which is in the words as follows, to wit:

Replication.

HAMPDEN, *ss:*

Superior Court.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

Plaintiff's Replication.

And now comes the plaintiff and, in reply to that part of the defendant's answer which sets up a former judgment as a bar, says that the defendant is precluded from pleading said former judgment in this action because in a former proceeding between the same
73 parties, to wit, a bill in equity brought by the plaintiff against the defendant in this court, involving title to goods and chattels acquired in the same transaction upon which the plaintiff bases his title to the goods and chattels sued for in this action, the defendant, after putting such former judgment in evidence, asked the court for a ruling that it was a bar to said bill in equity and because it was adjudicated and decreed by said court that said former judgment was not a bar, and the defendant abided by said adjudication and decree.

And the plaintiff, further replying, says that in equity and good conscience the former judgment pleaded by the defendant ought not to be a bar to the plaintiff's cause of action because the plaintiff in the suit in equity in which said former judgment was rendered, being in ignorance, without fault on his part, concerning the title to the property described in the bill in equity, was misled into describing the property sued for in said bill in equity in the manner therein set forth by the claim of the defendant that he held title to all of the bankrupt's property, with the exceptions noted in said bill;

because said plaintiff in equity, disputing the defendant's title to any of the property of the bankrupt and informing the defendant of his intention to have the title to said proper adjudicated, the defendant exhibited to him the bills of sale mentioned in said bill in equity, avering that his title to all of the bankrupt's property, with the exceptions mentioned, rested on said bills of sale and that said bills of sale covered all of said property with the exceptions mentioned; because said plaintiff in equity, on account of said ignorance of title and of said representations by the defendant, intended
74 by his bill in equity to bring into question the title of the property covered by said bills of sale only; and because the defendant in his answer to said bill in equity claimed title to all of the property therein described by virtue of said bills of sale and did not disclaim title to any of the property involved in this action.

And the plaintiff, further replying, says that the goods and chattels described in his declaration were the property of one James Connor, who was adjudicated a bankrupt by the District Court of the United States for the District of Massachusetts June 18, 1901; that on August 3, 1901, Nathan P. Avery, of Holyoke, was appointed trustee in bankruptcy of the estate of said Connor; that on August 6, 1901, the said Avery duly filed bond and duly qualified as such trustee; that on September 18, 1901, the plaintiff acquired title to said goods and chattels by purchase from said Avery as trustee aforesaid, said Avery being duly authorized to make sale of said goods and chattels; that the plaintiff in this action, relying upon such title acquired as aforesaid from said Avery, specially sets up and claims that said title was acquired under an authority exercised under the United States within the meaning of Section 709 of the Revised Statutes of the United States.

By His Att'y, C. T. CALLAHAN.

On the fourteenth day of June, nineteen hundred and seven, the plaintiff filed a motion to amend his replication, which is in the words as follows, to wit:

75 *Motion to Amend Replication.*

HAMPDEN, *ss:*

Superior Court.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

Plaintiff's Motion to Amend Replication.

And now comes the plaintiff and moves for leave to amend his replication by adding to the second paragraph thereof the following: "And because said plaintiff in equity did not discover until long after a year after the final decree in said suit in equity that the defendant made claim to title to any of the property involved in this

action by virtue of said bills of sale;" so that said paragraph shall read as follows:

"And the plaintiff, further replying, says that in equity and good conscience the former judgment pleaded by the defendant ought not to be a bar to the plaintiff's cause of action because the plaintiff in the suit in equity in which said former judgment was rendered, being in ignorance, without fault on his part, concerning the title to the property described in the bill in equity, was misled into describing the property sued for in said bill in equity in the manner therein set forth by the claim of the defendant that he held title to all of the bankrupt's property, with the exceptions noted in said bill; because said plaintiff in equity, disputing the defendant's title to any of the property of the bankrupt and informing the defendant of his intention to have the title to said property adjudicated, the defendant exhibited to him the bills of sale mentioned in said bill in equity, averring that his title to all of the bankrupt's property, with the exceptions mentioned, rested on said bills of sale and that
76 said bills of sale covered all of said property with the exceptions mentioned; because said plaintiff in equity, on account of said ignorance of title and of said representations by the defendant, intended by his bill in equity to bring into question the title of the property covered by said bills of sale only; and because the defendant in his answer to said bill in equity claimed title to all of the property therein described by virtue of said bills of sale and did not disclaim title to any of the property involved in this action; and because said plaintiff in equity did not discover until long after a year after the final decree in said suit in equity that the defendant made claim to title to any of the property involved in this action by virtue of said bills of sale."

By His Attorney, C. T. CALLAHAN.

Endorsed on back as follows, to wit:
May be filed. C. L. Gardner, Att'y for Defendant.

On the eighteenth day of said June, an agreed statement was filed which is in the words as follows, to wit:

Agreed Statement.

HAMPDEN, *ss:*

Superior Court.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

The parties hereby agree to the following facts:

1. James Connor, referred to in the pleadings and the evi-
77 dence, was duly adjudicated a bankrupt by the District Court of the United States for the District of Massachusetts June 18, 1901. Nathan P. Avery, referred to in the pleadings and the

evidence, was duly appointed trustee in bankruptcy of the estate of said Connor on August 3, 1901, duly filed bond and duly qualified as such trustee on August 6, 1901, and was duly authorized by said District Court to make sale of the property involved in this action.

2. Mr. Avery never acquired any interest or title in the goods sued for other than such interest or title as he acquired by virtue of being appointed trustee in bankruptcy of Connor.

3. Such title as the plaintiff has was acquired by virtue of a sale September 18, 1901, by said Avery as trustee of all the machinery of the bankrupt estate not covered by the bills of sale given by Connor to Craven, the defendant, October 12, 1883, April 6, 1885, and March 10, 1891.

4. All the property mentioned in the declaration was from the date of Connor's adjudication in Bankruptcy to the date of the dismissal of the equity suit, Avery, Trustee *v.* Craven, located in the buildings and rooms therein specified in the declaration, and none of the property so mentioned was included in the exceptions set out in paragraph numbered 3 of the bill of complaint in said equity suit.

5. Items, 5, 6, 82, 94, 95, 113, 114, 118, 119, 120, 130, 132, and 133 shall be stricken from the declaration.

C. T. CALLAHAN,
Attorney for Plaintiff.
C. L. GARDNER,
Attorney for Defendant.

78 At the June Sitting, nineteen hundred and seven, the case was committed to a jury sworn to try the same, who returned their verdict therein, by order of the Court, which is in the words as follows, to wit:

Verdict.

HAMPDEN, *ss:*

Superior Court, June Sitting, A. D. 1907.

WM. J. CORBETT, Pl'ff,

—.

MICHAEL CRAVEN, D'f'd't.

The Jury find for the defendant.

HARRY H. PETTIBONE, *Foreman.*

On the fifth day of August, nineteen hundred and seven, it was therefore considered and ordered by the Court that the said defendant recover judgment against the said plaintiff for his costs of suit taxed at ——.

On the tenth day of said August, the plaintiff filed a motion to vacate judgment, which motion is in the words as follows, to wit:

Motion to Vacate Judgment.

HAMPDEN, *ss:*

Superior Court.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

And now comes the plaintiff and moves that the judgment therein entered be vacated and the case brought forward on the docket.

By His Att'y, C. T. CALLAHAN.

Which motion was allowed and said judgment was vacated.

79 Whereupon the plaintiff, alleged sundry exceptions to the opinions and rulings of the Court, which being found conformable to the truth were allowed and signed by the presiding Judge, and the questions were transmitted to the Supreme Judicial Court for consideration, which exceptions are in the words as follows, to wit:

COMMONWEALTH OF MASSACHUSETTS.

Hampden, ss:

Superior Court. June Sitting, 1907.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

Plaintiff's Exceptions.

This is an action of tort for the conversion of certain personal property. The writ and pleadings are made a part hereof.

In 1882, James Connor, of Holyoke, was engaged in the woolen manufacturing business in a mill belonging to the Holyoke Water Power Company, in Holyoke, known as the Bigelow Street Mill. In 1882, desiring to increase his business and establish a larger plant, he purchased from Henry Hilton, late of New York City, all the mill machinery and all the personal property connected with it in the building known as the New York Mill in Holyoke. This machinery consisted of cards, looms and other machinery and equipments necessary and pertinent to a plant engaged in manufacturing woolen cloth. The New York Mill contained eleven sets of woolen machinery. A set of woolen machinery is a set of cards together with the necessary complement of looms, spinning, finishing machinery, etc. The quantity and kind of machinery constituting the complement of a set of cards is determined by the character of the required product in any given case. In the case at bar changes in the pro-

duct from time to time made necessary or expedient the purchase and addition of some of the machinery described in the plaintiff's declaration. The Bigelow Street Mill contained four sets of woolen machinery. October 12, 1883, Connor sold to Michael Craven,
80 the defendant, four sets of woolen machinery in the Bigelow Street Mill evidenced by a bill of sale, of which the following is a copy:

HOLYOKE, MASS., *October* 12, 1883.

Michael Craven Bought of Connor Bros.

4 Entire Sets Woolen Machinery stored in Woolen Mill, corner of Cabot & Bigelow Streets for Ten Thousand Dollars. $10,000

Received Payment,

CONNOR BROS.

April 6, 1885, Connor sold to Craven eleven sets of woolen machinery, including all the machinery, tools, shafting, etc., then owned by him in the New York Mill, evidenced by a bill of sale, of which the following is a copy:

HOLYOKE, MASS., *April* 6, 1885.

Michael Craven, South Deerfield, Mass., Bought of Connor Brothers.

Eleven sets of Woolen Machinery for Twenty Thousand Dollars, $20,000, and other valuable consideration, the same being free from all incumbrances, and includes all of the machinery, tools, shafting and hangers, bought of Henry Hilton, now on the premises described hereafter, with all machinery and improvements added thereto since said purchase. Said machinery is at present stored in the brick woolen mill buildings owned by the Holyoke Water Power Company, situated on Main street, Holyoke, and known as the New York Mill.

Received Payment,

CONNOR BROS.

Immediately after the sale of April 6, 1885, Craven leased to Connor by oral agreement the property acquired by him by these two purchases upon Connor's oral agreement to pay a certain annual rental, and also to pay taxes, insurance, and to make repairs. At the hearing before the auditor, whose report is hereinafter referred to, the defendant claimed that, in addition, Connor agreed to keep up the depreciation, or to keep the depreciation good. This was denied by the plaintiff. The defendant also contended that all the property described in the declaration passed to him by virtue of the condition in the contract of letting that Connor should keep the depreciation good, and that at each of the different times
81 when additions were made to the plant by Connor certain oral agreements were made by Connor with the defendant, by virtue of which the defendant gained title to all of the property in controversy. Connor continued to use the property as such lessee

until his bankruptcy in 1901. March 10, 1891, Connor bought twenty Knowles broad looms, and installed ten of them in the Bigelow Street Mill, and ten in the New York Mill, and on the same date sold them to Craven, as evidenced by a bill of sale, of which the following is a copy:

HOLYOKE, MASS., *March* 10, 1891.

Michael Craven Bought of Connor Bros.

10 "Knowles" Broad Looms, $275 ..... $2,750
stored for said M. Craven in Bigelow Street Woolen Mills, Cor. of Cabot St.
10 "Knowles" Broad Looms, $275 ..... $2,750
stored for said M. Craven in New York Mills on Main St., Cor. of South St.

$5,500

Received Payment,

CONNOR BROS.

June 18, 1901, Connor was duly adjudicated a bankrupt.

August 3, 1901, Nathan P. Avery, Esquire, of Holyoke, was appointed trustee in bankruptcy of Connor's estate, and August 6, 1901, he qualified by filing bond. August 15, 1901, Mr. Avery, as trustee as aforesaid, brought a bill in equity against the defendant Craven in the Superior Court of this Commonwealth, and a copy of the record of that action is annexed hereto, marked "A," and is made a part hereof. The bills of sale therein referred to are the same as those hereinbefore set forth. September 18, 1901, Avery as trustee sold to William J. Corbett, the plaintiff, all the woolen machinery of the estate not covered by the bills of sale, which transaction included the machinery for the conversion of which this action is brought. At the time of making this sale, the trustee was almost wholly ignorant of the amount of machinery not covered by the bills of sale.

Subsequent to April 6, 1885, and prior to June 18, 1901, when he was adjudicated a bankrupt, Connor purchased and added to the machinery in the two mills from time to time certain ma-
82 chines, parts of machines, and other manufacturing implements besides the twenty Knowles broad looms already referred to, and all of the property sued for in this action is property so added subsequent to April 6, 1885. Such additions were of less value than the machinery conveyed to Craven by the aforesaid sales. All the machinery in the shoddy mill building connected with the Bigelow Street Mill and some of the machinery in the woolen mill building at the same mill belonged to Connor and passed to Avery, trustee, and never belonged to Craven, but was sold by said trustee before the sale to the plaintiff hereinbefore referred to.

At the trial the parties agreed in writing to the following facts:

1. James Connor, referred to in the pleadings, and the evidence, was duly adjudicated a bankrupt by the District Court of the United States for the District of Massachusetts June 18, 1901. Nathan P.

Avery, referred to in the pleadings and the evidence, was duly appointed trustee in bankruptcy of the estate of said Connor on August 3, 1901, duly filed bond and duly qualified as such trustee on August 6, 1901, and was duly authorized by said District Court to make sale of the property involved in this action.

2. Mr. Avery never acquired any interest or title in the goods sued for other than such interest or title as he acquired by virtue of being appointed trustee in bankruptcy of Connor.

3. Such title as the plaintiff has was acquired by virtue of a sale September 18, 1901, by said Avery as trustee of all the machinery of the bankrupt estate not covered by the bills of sale given by Connor to Craven, the defendant, October 12, 1883, April 6, 1885, and March 10, 1891.

4. All the property mentioned in the declaration was from the date of Connor's adjudication in bankruptcy to the date of the dismissal of the equity suit, Avery, Trustee, *v.* Craven, located in the buildings and rooms therein specified in the declaration, and none of the property so mentioned was included in the exceptions set out in paragraph numbered 3 of the bill of complaint in said equity suit.

5. Items 5, 6, 82, 94, 95, 113, 114, 118, 119, 120, 130, 132 and 133 shall be stricken from the declaration.

Among the findings of the auditor was the following, referring to the suit in equity of Avery *v.* Craven.

"I find from the record as evidence and from the testimony of Avery, trustee, that the title to all the machinery in the New
83 York Mill was not actually litigated in that suit; but that the question actually investigated and tried related to the validity and nature of the sales, Connor to Craven, 1883, 1885 and 1891, which are the sales hereinbefore set out; that the validity of these sales was established by the adjudication in that suit and that as to the property acquired by Connor after April 6, 1885, and set forth in this action in plaintiff's declaration, the judgment in the former action does not affect the title or bar the plaintiff's right to recover for its value."

Since the decision of this case by the Supreme Judicial Court reported in 193 Mass., the plaintiff filed a motion for leave to amend his declaration by adding thereto the following words:

"And the plaintiff says that said goods and chattels were the property of one James Connor, who was adjudicated a bankrupt by the District Court of the United States for the District of Massachusetts June 18, 1901; that on August 3, 1901, Nathan P. Avery, of Holyoke, was duly appointed trustee in bankruptcy of the estate of said Connor; that on August 6, 1901, the said trustee duly filed bond and duly qualified as such trustee; that on September 18, 1901, the plaintiff acquired title to said goods and chattels by purchase from said Avery as trustee aforesaid, the said Avery being duly authorized by said district court to make sale of said goods and chattels; and that the plaintiff in this action, relying upon such title acquired as aforesaid from said Avery, specially sets up and claims that such title was acquired under an authority exercised

under the United States within the meaning of Section 709 of the Revised Statutes of the United States."

This motion was duly allowed. The plaintiff since the decision also filed a replication and amended replication to the defendant's answer.

At the trial the plaintiff put in evidence the report of the auditor, who found for the plaintiff in the sum of Three Thousand Six Hundred and Three Dollars and twelve cents with interest from August 15, 1901, and rested. The defendant thereupon offered in evidence the record in the equity suit of Avery, Trustee, *v.* Craven, a copy of which, marked "A," is hereto annexed and is made a part hereof. The plaintiff objected to the admission of the record. The court admitted it, and the plaintiff duly excepted.

The plaintiff offered evidence to show that the trustee, Avery, who was plaintiff in said equity suit of Avery *v.* Craven, described the property in his bill in the manner therein set forth in ignorance and mistake concerning its titular character; that the bank-
84 rupt, who had been respondent to an involuntary petition in bankruptcy, refused, upon advice of counsel, to give any information to the trustee concerning the title to the property; that this refusal continued up to and beyond the time of filing said bill, August 15, 1901, which was nine days after the trustee qualified as such; that the defendant in said suit in equity and in this action exhibited said bills of sale to the trustee and informed the trustee that they covered all of the property of the bankrupt, with the exceptions noted in said bill; that the trustee, unable to obtain information from the bankrupt or from any other source, relied upon the representations of the defendant and in good faith described in his bill the property concerning which he sued in the manner therein set forth; that the only question actually investigated and tried by the suit in equity was the validity of the bills of sale; and that the said trustee did not discover that the defendant claimed title to any of said property except by virtue of said bills of sale until more than a year after the date of the final decree of said suit in equity.

The plaintiff also offered:

1. The record of judgment in the equity suit of Corbett *v.* Craven.

2. Evidence that the machinery therein involved was part of the machinery covered by the original sale from Avery to the plaintiff and was a part of the transaction upon which the plaintiff relies for his title in this action.

3. That at the hearing of said suit in equity the defendant offered said judgment in evidence, cross-examined the trustee Avery, who was a witness, upon the description of the property contained in the bill, and examined the defendant, who was also a witness, upon the same description.

4. That the defendant at that hearing requested a ruling that the former judgment pleaded in said action was a bar to said suit in equity; that the request was refused by the court; that said court

adjudged and decreed that said former judgment was not a bar; and that the defendant abided by said adjudication and decree.

The court ruled that, even if the facts offered were proved, the record was a bar to the plaintiff's right to recover, and directed a verdict for the defendant. To this ruling and direction the plaintiff duly excepted. The jury returned a verdict for the defendant in accordance with the court's direction, and the plaintiff, being aggrieved, prays that his exceptions may be allowed.

By His Attorney, C. T. CALLAHAN.

Exceptions allowed.
JABEZ FOX, *J. S. C.*

85 And on the seventeenth day of October, nineteen hundred and seven, the following rescript was received from the Supreme Judicial Court aforesaid, to wit:

Rescript.

COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, Oct. 15, 1907.

In the case of William J. Corbett *vs.* Michael Craven pending in the Superior Court for the County of Hampden.

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court, viz:—

Exceptions overruled.

By the Court,

C. H. COOPER, *Clerk.*

October 15, 1907.

Endorsed: Brief statement of the grounds and reasons of the decision. The rulings were right. (See opinion)

On the second day of November, nineteen hundred and seven, Walter S. Robinson disappeared as attorney for said trustee, which disappearance is in the words as follows, to wit:

86 *Disappearance.*

Nov. 2, 1907.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

I hereby withdraw my appearance in behalf of the Springfield Safe Deposit & Trust Company, Trustee.

WALTER S. ROBINSON.

And on said second day of November, said Walter S. Robinson entered his appearance for the plaintiff, which is in the words as follows, to wit:

Appearance.

HAMPDEN, *ss:*

Superior Court.

WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

Appearance for Plaintiff.

I appear for the plaintiff in the above named action of tort.
WALTER S. ROBINSON.

And on the fourth day of November, nineteen hundred and seven, it was therefore considered and ordered by the Court that the said defendant recover judgment against the said plaintiff for his costs of suit taxed at.....

87 *Docket Minutes.*

2494.

William J. Corbett.		Michael Craven.
C. T. Callahan.		Beckwith (disappears June 7/06).
1905, May 1.	Entered declaration.	
May 31.	Answer. June Sitting Referred to James L. Doherty, Auditor.	Robinson for Tr. Springfield Safe Deposit & Trust Co. (Feb. 15/06) (disappears Nov. 2/07).
1906, Jan. 15.	Motion for Special precept,—allowed and special precept issued (*vs.* Trustees) returnable 1st Monday February.	Beckwith for defendant (June 11/06) (disappears Feb. 21/07).
Feb. 7.	Amended answer.	Gardner & Gardner (March 20/07).
Feb. 15.	Answer of Springfield Safe Deposit & Trust Company, Trustee.	
May 31.	Auditor's Report.	
June 14.	Jury, Herbert S. Martin foreman.	
Jury.		
June 21.	Verdict for plaintiff for $4696.02.	
July 7.	Defendant's exceptions.	
July 31.	Exceptions allowed.	
Oct. 18.	Exceptions sustained.	
1907, May 6.	Amendment to declaration. Replication.	1907, November 4. Judgment.
June 14.	Motion to amend replication.	
June 18.	Agreed statement. Jury, Harry Pettibone, foreman. Verdict for defendant by order of court.	
Aug. 10.	Motion to vacate judgment (see consent of defendant on back of exception). Judgment vacated. Exceptions.	
Sept. 13.	Exceptions allowed.	
Oct. 17.	"Exceptions overruled." Robinson (Nov. 2, 1907).	

I do certify that the foregoing is a true copy of the papers in the above-named case, and a transcript of the proceedings of the Superior Court therein.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, on this twenty-ninth day of November, in the year of our Lord one thousand nine hundred and seven.

[Seal the Superior Court.]

ROBERT O. MORRIS, *Clerk.*

88 *Petition for Writ of Error.*

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Hampden, ss:

WILLIAM J. CORBETT
v.
MICHAEL CRAVEN.

Petition for Writ of Error.

To the Honorable the Justices of the Superior Court of the Commonwealth of Massachusetts holden at Springfield within and for the County of Hampden:

Your petitioner, William J. Corbett, of Boston, in the County of Suffolk and Commonwealth aforesaid, respectfully shows unto your Honors that on the fourth day of November A. D. 1907, at Springfield, in said County of Hampden, in said Commonwealth of Massachusetts, in an action of tort in said superior court in and for said County, in which your petitioner was plaintiff and the said Michael Craven was defendant, a final judgment was rendered against your petitioner, as will appear by reference to the record and proceedings in said cause, and that said court is the highest court of said state in which a decision in said suit could be had.

And your petitioner says that in said suit he specially set up and claimed a title under an authority exercised under the United States within the meaning of Section 709 of the Revised Statutes of the United States; and the decision in said suit was against the title specially set up and claimed by your petitioner under such authority; and a manifest error hath happened in said suit and judgment to the great damage of your petitioner as appears by
89 the assignment of errors hereto annexed.

Wherefore your petitioner prays the allowance of a writ of error returnable to the supreme court of the United States, to the end that said errors shall be duly corrected and full and speedy justice done to your petitioner in this behalf.

WILLIAM J. CORBETT,
By His Attorneys, WALTER S. ROBINSON,
CHRISTOPHER T. CALLAHAN.

Let the writ of error issue.

JOHN A. AIKEN,
Chief Justice of the Superior Court of the Commonwealth of Massachusetts.

Assignment of Errors.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Hampden, ss:

WILLIAM J. CORBETT
v.
MICHAEL CRAVEN.

Assignment of Errors.

William J. Corbett, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, the plaintiff in an action of tort lately pending in the superior court of said Commonwealth in and for the County of Hampden, entitled William J. Corbett *v.* Michael Craven, wherein your petitioner specially set up and claimed a title under an authority exercised under the United States within the meaning of Section 709 of the Revised Statutes of the United States, being
90 aggrieved by the rulings and final judgment of said court in the said cause, which said rulings and final judgment are against the title so specially set up and claimed and are in derogation of the rights of the plaintiff claiming said title, hereby assigns the following errors in said rulings and final judgment, namely:

1. Said superior court erred in directing the jury to find a verdict for the defendant.

2. Said superior court erred in admitting in evidence the record in the equity suit of Avery, Trustee *v.* Craven set forth in the bill of exceptions.

3. Said superior court erred in ruling and deciding that the record of said equity suit was a bar to the plaintiff's right to recover.

4. Said superior court erred in ruling and deciding against the title acquired by purchase by the plaintiff from Avery, trustee in bankruptcy.

5. Said superior court erred in ruling and deciding that the final decree in the equity suit of Avery, Trustee *v.* Craven was an adjudication of title in said Craven, the defendant, to the property involved in this action, to which property the plaintiff claimed title by virtue of purchase duly made by him from said Avery duly acting as trustee in bankruptcy.

6. Said superior court erred in ruling and deciding that the plaintiff did not acquire title as against the defendant by virtue of his said purchase from said Avery acting as trustee as aforesaid.

91 7. Said superior court erred in ruling and deciding that said record in the equity suit of Avery, Trustee *v.* Craven is a bar to the plaintiff's right to recover even if the plaintiff proved, as he offered to prove, that the trustee, Avery, who was plaintiff in said equity suit, described the property in his bill in the manner therein set forth in ignorance and mistake concerning its titular character; that the bankrupt, who had been respondent to an involuntary petition in bankruptcy, refused, upon advice of counsel, to give any information to the trustee concerning the title to the

property; that this refusal continued up to and beyond the time of filing said bill, August 15, 1901, which was nine days after the trustee qualified as such; that the defendant in said suit in equity and in this action exhibited certain bills of sale to the trustee and informed the trustee that they covered all of the property of the bankrupt, with the exceptions noted in said bill; that the trustee, unable to obtain information from the bankrupt or from any other source, relied upon the representations of the defendant and in good faith described in his bill the property concerning which he sued in the manner therein set forth; that the only question actually investigated and tried by the suit in equity was the validity of the bills of sale; and that the said trustee did not discover that the defendant claimed title to any of said property except by virtue of said bills of sale until more than a year after the date of the final decree of said suit in equity.

WILLIAM J. CORBETT,
By His Attorneys, WALTER S. ROBINSON,
CHRISTOPHER T. CALLAHAN.

Filed November 4, 1907.

92 *Bond on Writ of Error.*

Know all men by these presents, That we, William J. Corbett, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, as principal, and Martin C. Pfhaler and William Reardon, both of Holyoke, in the County of Hampden and Commonwealth aforesaid, as sureties, are held and firmly bound unto Michael Craven, now or formerly of Springfield, in said County of Hampden in the full and just sum of Five Hundred (500) dollars, to be paid to the said Michael Craven, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this fourth day of November, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately in the Superior Court of the Commonwealth of Massachusetts holden at said Springfield in and for said County of Hampden in a suit depending in said Court, between said William J. Corbett, plaintiff, and said Michael Craven, defendant, a final judgment was rendered against the said William J. Corbett, and the said William J. Corbett having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Michael Craven citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

93 Now, the condition of the above obligation is such, That if the said William J. Corbett shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his

plea good, then the above obligation to be void; else to remain in full force and virtue.

MARTIN C. PFHALER. [SEAL.]
WILLIAM REARDON, [SEAL.]
WILLIAM J. CORBETT. [SEAL.]

Sealed and delivered in presence of—
C. T. CALLAHAN.

[Seal the Superior Court.]

Approved by—
JOHN A. AIKEN,
Chief Justice of the Superior Court
of the Commonwealth of Massachusetts.

Filed November 7, 1907.

Docket Minutes.

4212.

William J. Corbett (In Error). Michael Craven.

Robinson.
C. T. Callahan.
1907, November 4. Entered.
Assignment of errors.
(Bond filed.)

COMMONWEALTH OF MASSACHUSETTS, *Hampden, ss:*

I, Robert O. Morris, Clerk of the Superior Court of said Commonwealth of Massachusetts, for the county of Hampden, do hereby certify that the foregoing is a true copy of the papers in the case of William J. Corbett (In Error) *vs.* Michael Craven and an-
94 nexed hereto and transmitted herewith is a copy of the opinions of the Supreme Judicial Court of the Commonwealth of Massachusetts, attested by Henry W. Swift, report of decisions.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, on this twenty-fifth day of November, in the year of our Lord, one thousand nine hundred and seven.

[Seal the Superior Court.]

ROBERT O. MORRIS, *Clerk.*

95 COMMONWEALTH OF MASSACHUSETTS:

BOSTON, *November* 27, 1907.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of William J. Corbett *vs.* Michael Craven decided on the 16th day of October, 1906.

HENRY WALTON SWIFT,
Reporter of Decisions.

96 WILLIAM J. CORBETT
v.
MICHAEL CRAVEN.

KNOWLTON, *C. J.*:

This is a suit for the conversion of certain machinery. The question presented by the bill of exceptions is whether the plaintiff is barred by a former decree for the defendant in a suit in equity. That suit was brought by the person from whom the present plaintiff took his title *pendente lite*, and the decree is binding not only upon the parties to it, but upon their privies. There is no dispute that the present plaintiff is affected by it as the plaintiff in that suit would have been if he had not parted with his title. Sawyer *v.* Woodbury, 7 Gray, 499-502. Borrowscale *v.* Tuttle, 5 Allen, 377. Haven *v.* Adams, 8 Allen, 363. The decree was "Bill dismissed," which is a final decree upon the merits, that settles forever all matters involved in the suit. Snell *v.* Dwight, 121 Mass., 348. Foote *v.* Gibbs, 1 Gray, 412.

If the question were, What is the effect of the judgment in a collateral proceeding? the case would be different, and the answer would be, Only to settle such matters as were actually tried and adjudicated. But as a final disposition of the case, a judgment on the merits includes everything that was litigated, or that might have been litigated, in the case brought by the plaintiff before the court. Foye *v.* Patch, 132 Mass., 105-110. Watts *v.* Watts, 160 Mass., 464-465. Buttrick, Petitioner, 185 Mass., 107-113. There is nothing in the decision in Waterhouse *v.* Levine, 182 Mass., 407, adverse to this view although some of the language in the opinion is
97 broader than the case called for. The cause of action in that suit was not the same as that to which the judgment in the former action related, but it came into existence after the former action was brought. Although the two actions related to the same transaction, it was competent to show that the last was for a cause of action which had lately arisen, and which could not be affected by a judgment founded on different conditions existing previously.

We are, therefore, brought to the question which has been most discussed, namely, whether the suit in equity included the present cause of action. The plaintiff in equity was the trustee of one Connor, a bankrupt, and he averred in the third clause of his bill "that the said bankrupt owns and has located, in the brick buildings at number 649 Main street in said Holyoke called the New York Mills, all the machinery, tools and manufacturing implements located in said mills, and all machinery in the mills situated at the corner of Gabot and Bigelow streets in said Holyoke, called the Bigelow Street Mills of the Holyoke Water Power Company, of great value, and all of which property is claimed to be owned by Michael Craven, of Springfield in said county." Then followed an exception of certain machinery which is immaterial to this case. The present action is to recover for a conversion of a part of the machinery in these mills. In the fourth clause of the bill, after an averment in regard to the purchase "of all of the above described personal property" by

the bankrupt, the plaintiff charged, "that later, in the years 1883, 1885 and 1891, Michael Craven claims that the property was conveyed to him on the payment of certain amounts." In the fifth clause he charged "that the said Michael Craven did not make the purchase of any of the personal property above mentioned," and that his alleged title was fraudulent as against creditors.

98 The defendant's answer was an admission "that he claims to be the owner of certain machinery, tools and manufacturing implements located in the New York Mills, and all the machinery in the Bigelow Street Mils, excepting," etc. * * *, "as alleged in the third paragraph of plaintiff's bill, and says he became the owner thereof by purchase from said James Connor in the years 1883, 1885 and 1891." The other admissions of the answer are immaterial, and there was a denial of all allegations not expressly admitted. In his prayer for relief the plaintiff asked, among other things, that the title to all this personal property be decreed to be in him.

Here, then was an issue including all the property referred to in the present action, and by a decree dismissing the bill the issue was determined in favor of the defendant. It now appears that the principal matter to which the testimony at the hearing in equity was directed was the property covered by the three bills of sale given by Connor to the defendant. There was other property in these mills which was not included in these bills of sale, which the defendant contends passed to him from Connor, under other agreements. In regard to this the jury in the present action has found for the plaintiff. But if it was included in the claim made by the bill in equity, the decree in that action was final and conclusive as to the title, even if the parties omitted to distinguish the property from that described in the bills of sale.

The language of the bill is plainly inclusive of it, and there is nothing in the statement that limits the issue tendered by the plaintiff in the statement of his claim and of the defendant's adverse claim. The jury should have been instructed in accordance with the contention of the defendant.

Exceptions sustained.

99 COMMONWEALTH OF MASSACHUSETTS.

BOSTON, *November* 27, 1907.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of William J. Corbett *vs.* Michael Craven decided on the 15th day of October, 1907.

HENRY WALTON SWIFT,
Reporter of Decisions.

100 WILLIAM J. CORBETT
vs.
MICHAEL CRAVEN.

KNOWLTON, *C. J.*:

In the decision of this case, reported in 193 Mass., (78 N. E. Rep. 748) it was held that, upon the conceded facts, the plaintiff's cause of action was barred by an adjudication in a suit in equity brought by the plaintiff's predecessor in title. In a second trial the plaintiff sought to avoid the effect of this adjudication by evidence that the plaintiff in the suit in equity, and he himself who acquired his title soon after the suit was brought were ignorant and mistaken as to material facts involved in the case as it was stated in the pleadings and determined by the final decree. This was an attempt to obtain relief from an adverse decree in equity, not by proceedings to set aside the decree, but by a collateral attack upon it in an action at law. This on its face was irregular. The ordinary remedy, when a decree is improperly entered, is by a bill of review. If, through lapse of time or for other reasons, this remedy is not available, there may be relief by way of an injunction in equity, if justice demands it, and there is no other way open. Currier *v.* Estey, 110 Mass., 536. Amherst College *v.* Allen, 165 Mass., 178. Instead of bringing a bill in equity, the plaintiff filed a replication averring the facts relied on. Equitable relief can be given in an action at law only under the R. L. c. 177, ss. 28-32. A defendant who wishes to set up an equitable defense, or a plaintiff who wishes to claim equitable rights by a replication under this statute, should put his pleadings in such a form as to show that he seeks equitable relief which otherwise would not be
101 open to him in such an action. Sherman *v.* Galbraith, 141 Mass., 440-442. Mason *v.* Mason, 140 Mass., 63-65. Barton *v.* Radelyffe, 149 Mass., 275-280. If, under a liberal construction of the statute, we hold that this replication is sufficient in this particular, we come to other considerations

The matters relied on amount to nothing more than that the plaintiff in the first suit was ignorant of some of the facts when he filed his bill, and that the bankrupt, whose title he took as trustee, declined, by advice of counsel, to give him information, and that afterwards the defendant made some statements which proved to be incorrect. There was no offer to prove that these statements were made fraudulently, there is no suggestion that there was any accident in connection with the bringing, or the trial, or the decision of the case, such as would constitute a ground for equitable relief, nor any mutual mistake of the parties that entered into any action which they took together. The case is very different from Currier *v.* Estey, 110 Mass., 536, on which the plaintiff relies. In that suit the judgment was founded on an agreed statement of facts, believed by the court to be true, which was incorrect in a very important particular, about which the parties, when they made their agreement and for a long time after the entry of the judgment, were mutually mistaken. In the present case, as in Amherst College *v.* Allen, 165 Mass., 178, the facts show no ground for interference with the de-

cree. If misunderstanding or ignorance of some of the material facts, by one of the parties, and the refusal of the other to give information, upon inquiry, were a ground for setting aside
102 judgments rendered after a trial in court, the doctrine *res judicata* would be of little practical importance. The ruling on this part of the case was correct. The kind of mistake which is a foundation for equitable relief is a mutual mistake of the parties, not a mistake of one of them. Page *v.* Higgins, 150 Mass., 27, and cases cited.

The bill of exceptions states that the plaintiff offered "the record of the judgment in the equity suit of Corbett *v.* Craven," and certain other evidence connected with it. There is no previous reference to any such suit in the bill of exceptions, nor anything to show what the suit was about, if there was such a suit. The record offered in evidence and excluded is not made a part of the bill of exceptions, and, construing the bill strictly, there is nothing before the court which gives us any important information about it. The only previous reference to it in the record is found in the plaintiff's replication, as follows: "And now comes the plaintiff, and in reply to that part of the defendant's answer which sets up a former judgment as a bar, says that the defendant is precluded from pleading said former judgment in this action, because, in a former proceeding between the same parties, to wit, a bill in equity brought by the plaintiff against the defendant, in this court, involving title to goods and chattels sued for in this action, the defendant, after putting such former judgment in evidence, asked the court for a ruling that it was a bar to said bill in equity, and because it was adjudicated and decreed by said court that said former judgment was not a bar and the defendant abided by said adjudication and decree." At the argument the clerk, in the presence of counsel, handed us a
103 certified copy of the record of such a suit, and if we treat it as a part of the bill of exceptions, we are to consider the offers of proof numbered two, three and four, in connection with it. If the proof had been established, the court would have had before it a bill in equity filed and finally disposed of, later than the bill referred to in 193 Mass. (78 N. E. Rep. 748), involving the title to certain machinery, no part of which is the subject of the present suit, but which was a part of that covered by the sale to the plaintiff upon which he relies for his title to the property described in this action. It would appear that, at the trial of the equity suit of Corbett *v.* Craven, the defendant offered the judgment in the earlier suit as evidence, and examined two witnesses as to the description of the property, that he then asked the judge to rule that the former judgment—meaning, we suppose, the decree in the earlier suit in equity—was a bar to the later suit in equity, that the judge declined so to rule and ruled to the contrary, and the defendant did not appeal from the subsequent adjudication and decree for the plaintiff. This offer of evidence in the present suit was an attempt by the plaintiff to avoid the effect of the adjudication in the first suit, as a bar to the present claim, by showing that, in a later suit involving similar questions, there was a decision that the adjudication was not a bar.

In the first place, the copy of the record of the second suit handed us by the clerk, shows that the defendant failed to plead the former adjudication and that his answer contains no reference to it.
104 This would be a sufficient reason for ruling that the adjudication could not be considered and was not a bar to the second suit. Moreover, it does not appear that, in the trial of the second case, it was proved that the machinery in question was a part of that included in the sale on which the plaintiff now relies. The offer in the last trial was to prove that it was a part of it. But as to what occurred at the trial of the second suit, the only offer was to show that two witnesses were examined in regard to the description of the property. For both of these reasons the offer failed to show that the court, at the trial of the second suit, determined the same issue which was involved in the trial of the present case.

In order to avail one's self of a former adjudication on an issue in another suit upon a different cause of action as a bar to an opposite adjudication in a pending case, it must appear, either from the record alone or from the record supplemented by other evidence, that the issue was considered and determined by the court upon the merits. Foye *v.* Patch, 132 Mass., 105. The plaintiff's offer of proof did not go far enough to establish that proposition.

We do not find it necessary to consider the question whether, when the record fails to show that the issue determined in a former case was the same as that to be determined in the case before the court, and this can be proved only by parole evidence, a party can avail himself of a former adjudication, if the testimony introduced to show what it was proves that it was erroneous in law.

Exceptions overruled.

105 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court of Massachusetts.]

The President of the United States to the Honorable the Judges of the Superior Court of the Commonwealth of Massachusetts, holden at Springfield, within and for the County of Hampden, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Superior Court before you, or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between William J. Corbett, of Boston, in the County of Suffolk, in said Commonwealth, Plaintiff, and Michael Craven, of Springfield, in said County of Hampden, Defendant, in an action of tort wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title,

right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said William J. Corbett as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the fourth day of November, in the year of our Lord one thousand nine hundred and seven.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by
JOHN A. AIKEN,
Chief Justice of the Superior Court of the
Commonwealth of Massachusetts.

106 COMMONWEALTH OF MASSACHUSETTS,
Hampden, ss:

And now, here, the Judges of the Superior Court make return of this writ by annexing hereto and sending herewith, under the seal of the said Superior Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In Testimony Whereof, I Robert O. Morris, Clerk of said Superior Court, have hereto set my hand and the seal of said Court this twenty-ninth day of November, A. D. 1907.

[Seal the Superior Court.]

ROBERT O. MORRIS, *Clerk.*

107 UNITED STATES OF AMERICA, *ss:*

[Seal of the Superior Court.]

To Michael Craven, of Springfield, in the County of Hampden and Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Superior Court of the Commonwealth of Massachusetts,

wherein William J. Corbett, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John A. Aiken, Chief Justice of the Superior Court of the Commonwealth of Massachusetts, this fourth day of November, in the year of our Lord one thousand nine hundred and seven.

JOHN A. AIKEN,
Chief Justice of the Superior Court of the Commonwealth of Massachusetts.

108 ASHLAND, N. H., *Nov.* 14, 1907.

Pursuant hereunto I have this day served the within citation by giving in hand to Michael Craven a true and attested copy of this citation with my name and office endorsed thereon.

F. S. JOHNSON,
Deputy U. S. Marshal

Fees.

Travel 48 miles	2.88
Copy	.20
	$3.08
Service	2.00
	$5.08

Endorsed on cover; File No. 20,918. Massachusetts superior court. Term No. 214. William J. Corbett, plaintiff in error, *vs.* Michael Craven. Filed December 3d, 1907. File No. 20,918.

Office Supreme Court, U. S.
FILED.
APR 29 1909
JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908

No. 31.

WILLIAM J. CORBETT, PLAINTIFF IN ERROR

vs.

MICHAEL CRAVEN

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS

BRIEF FOR THE DEFENDANT

No. 214

WILLIAM J. CORBETT, PLAINTIFF IN ERROR

vs.

MICHAEL CRAVEN

BRIEF FOR THE DEFENDANT

I.

Nothing appears in the Record showing any basis for jurisdiction in this Court.

The gist of the action in the Court below was the claim of the plaintiff to recover for the alleged conversion by the defendant of certain personal property claimed by the defendant to be owned by him. The plaintiff was a purchaser *pendente lite* from one Avery, Trustee in Bankruptcy of one Connor (Record, pages 66, 74). The defendant contended that the title to all of this property had, in a former action between this Trustee and himself, been determined to be in him, i. e., that the question was *res adjudicata*. This contention was sustained by the Trial Court and by the Supreme Court upon exception, and it was upon this ground alone that judgment was awarded to the defendant.

The present plaintiff is affected by the decree in the former action in the same manner as the plaintiff in that suit would have been if he had not parted with his title.

Sawyer v Woodbury, 7 Gray, 499, 502
Borrowscale v Tuttle, 5 Allen, 377
Haven v Adams, 8 Allen, 363
Corbett v Craven, 193 Mass., 30

The issues involved were purely local; no federal question is presented within the meaning of section 709 of the Revised Laws; neither the validity or construction of any federal statute, nor the authority of any officer acting thereunder was brought in question.

It was found as a fact that the bankrupt had parted with his title to the property in question before the commencement of bankruptcy proceedings and consequently had no title to which the Trustee in Bankruptcy succeeded. (Record pages 2, 51, 53, 62, 68, 74, and 75.)

McKenna v Simpson, 129 U. S., 506

It will hardly be contended that any federal question is presented by the mere fact that the plaintiff claimed title from one who derived his authority from a federal statute.

Blackburn v Portland Gold Mining Company, 175 U. S., 571, 579

Continental Bank v Buford, 191 U. S., 119, 125

"A correct decision of the issue did not depend upon the construction of any federal law," nor could the "right or title" set up by the plaintiff in error "be defeated by one construction of the law of the United States or sustained by the opposite construction."

Cohens v Virginia, 6 Wheat, 379

Osborn v Bank of U. S., 9 Wheat, 739, 822

In the case of Cramer v Wilson, 195 U. S., 408, which was upon a writ of error to the Supreme Court of the State of Illinois, the facts were very similar to those in the case at the bar. The case involved the validity of a conveyance by a person subsequently adjudicated a bankrupt. The State Court held the conveyance valid as against a Trustee in Bankruptcy. In the opinion on page 416 it is said, "We have repeatedly held that when the question in a State Court is not whether, if the bankrupt had title, it would pass to his assignee, but whether he had any title at all, and the State Court decided that he had not; no federal question is presented."

"The question presented for the decision of the State Court was not whether if the bankrupt had title it would pass to his assignees by the operation of the Bankruptcy Act, but whether he had title at all. The Court decided that he had not. Such a decision by a State Court does not present a question of which this Court can take jurisdiction upon a writ of error."

Scott v Kelley, 22 Wall, 57

The suit of the Trustee in Bankruptcy against the present defendant was commenced in August, 1901. As the Bankruptcy Act then stood the Federal Courts would have had no jurisdiction to try the questions raised in that action.

Bardes v Bank of Hawarden, 178 U. S., 524

It cannot be that Congress intended to provide for review by the Federal Courts (in the absence of any question of the validity or construction of any United States statute or the authority of the Trustee thereunder) of matters of which it gave the State Courts exclusive jurisdiction.

The jurisdiction of State and Federal Courts in cases in which a National Bank is a party is analogous. National Banks for the purposes of all actions by or against them are deemed citizens of the states in which they are located, and it has been held that the mere fact that a National Bank is of federal origin does not give the Federal Courts jurisdiction.

Continental Bank v Buford, 191 U. S., 119, 124

Where, however, a federal question is presented by the Record the case is within the jurisdiction of the Federal Courts.

Metropolitan National Bank v Claggett, 141 U. S., 520
Swope v Leffingwell, 105 U. S., 3.

It is submitted that the record nowhere discloses that the Trial Court or the Supreme Judicial Court upon exception considered or passed upon any question of the validity of a statute of or authority exercised under the United States, or upon the question of any title, right, privilege, immunity or authority under the United States, but that on the contrary, the questions were purely local and within the exclusive jurisdiction of the State Court and the plaintiff in error is not entitled to any review upon the merits by this Court.

II.

If, however, this Court has jurisdiction and the plaintiff is entitled to a review upon the merits, it is submitted that the decision of the State Court was correct.

Counsel for the defendant is unable to add anything to the reasoning and authorities contained in the opinions of the Supreme Court of Massachusetts (Record pages 74, 76)

Corbett v Craven, 193 Mass., 30
Same v Same, 196 Mass., 319.

Respectfully submitted,

CHARLES G. GARDNER,

Attorney for Defendant

Office Supreme Court, U. S.
FILED.
APR 20 1909
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. [redacted]31.

WILLIAM J. CORBETT, PLAINTIFF IN ERROR,

vs.

MICHAEL CRAVEN.

BRIEF OF PLAINTIFF IN ERROR.

CHRISTOPHER T. CALLAHAN,
Attorney for Plaintiff in Error.

(20,918.)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 214.

WILLIAM J. CORBETT, PLAINTIFF IN ERROR,

v.

MICHAEL CRAVEN.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

BRIEF OF PLAINTIFF IN ERROR.

Statement of the Case.

In this case, where it is undisputed that a trustee in bankruptcy acquired title by bankruptcy proceedings to all the bankrupt's estate; where the trustee, acting under the authority of the District Court of the United States, at a time when there is pending in a State court a suit in equity brought by him against the defendant obviously to try the title to certain machinery which the defendant claimed by virtue of alleged bills of sale executed to him by the bankrupt prior to his bankruptcy, the language of the bill in equity not being entirely clear as to the identity of the property described therein, sells a part of the estate, consisting

of the property involved here, but described as machinery not covered by the bills of sale; where the only question in the equity suit actually litigated and determined was the validity of the bills of sale, and after the sale by the trustee the final decree of the State court was "Bill dismissed"; where the purchaser subsequently brings an action in the State court against the defendant for conversion of the property bought by him from the trustee, specially setting up and claiming under the title acquired from the trustee, and the defendant pleads the final decree as a bar to the purchaser's right to recover, and where the State court rules and decides against the purchaser's title by deciding that such decree is a bar, the following questions are presented:

(1) If upon examination of the record in the equity suit it ought to be held as a matter of law that the property in controversy here was not involved in the former suit, is the decision of the State court against the title acquired by the purchaser from the trustee acting under the authority of the Federal court, such a decision against a right or title claimed under the authority of the United States, within the meaning of section 709 of the Revised Statutes of the United States, as to give this court jurisdiction; or, does the trustee in beginning litigation in the State court, which involves the title to a portion of the estate, expose subsequent purchasers of the balance of the estate from him, who are forced into that court to protect their title, to the risk without relief from this court of being divested of the title acquired from him by a decision that an adverse judgment in the first case is a conclusive adjudication against the trustee's title to the balance of the estate?

(2) Under a true construction of the record in the equity suit, should it be held as a matter of law that the title to the property involved in this case was not, and might not have properly been, litigated and adjudicated in that suit?

(3) If it cannot be so held, is not the record *so* uncertain as to leave this court to conjecture as to what was necessarily

involved and decided, and, consequently, to prevent its operation as an estoppel, in the absence of extrinsic evidence to support the claim made for it by the defendant?

The parties are hereinafter referred to as the plaintiff and the defendant.

The original writ, dated March 28, 1905, was entered May 1, 1905, in the Superior Court for the County of Hampden. The plaintiff sued to recover for the conversion of certain machinery, tools, and implements. The answer, a general denial, was filed May 31, 1905, but, while the case was being heard by an auditor, was amended January 11, 1906, so as to set up as a bar to the action a former decree in favor of the defendant in a suit in equity brought against him by Nathan P. Avery, of Holyoke, trustee in bankruptcy of James Connor and the plaintiff's predecessor in title (Record, p. 12).

At the first trial in the Superior Court the defendant, in addition to other defenses not material at this point, relied on the record of the equity suit (Record, pp. 51-57) and asked for several rulings, the effect of which, if made, would have been that the title to the property involved in this action was or might have been adjudicated in the equity suit and that the decree entered in that suit was a bar to this action. The rulings were refused, and the jury returned a verdict for the plaintiff. Upon exceptions to these refusals to rule the case was taken to the Supreme Judicial Court, which sustained the exceptions (Record, pp. 57, 58).

The material facts at that trial were as follows:

1. From a date prior to October 12, 1883, to June, 1901, James Connor, of Holyoke, the bankrupt, was engaged in the manufacture of woolen cloth and shoddy in two mills in that city known as the New York mill and the Bigelow Street mill. In the former were eleven sets of woolen machinery; in the latter were four sets.

2. On October 12, 1883, Connor sold to Michael Craven, the defendant, the four sets in the Bigelow Street mill by a

bill of parcels set forth in the defendant's bill of exceptions in the first case (Record, p. 48). On April 6, 1885, Connor sold to the defendant the eleven sets in the New York mill by a similar bill, in which the property was described as including "all of the machinery, tools, shafting and hangers bought of Henry Hilton, now on the premises," * * * "with all machinery and improvements added thereto since said purchase." On March 10, 1891, Connor sold to the defendant twenty Knowles broad looms, ten of which were in the Bigelow Street mill and ten in the New York mill, by a similar bill.

3. On June 18, 1901, Connor was duly adjudicated a bankrupt.

4. On August 3, 1901, Nathan P. Avery, Esq., of Holyoke, was appointed trustee in bankruptcy of Connor's estate, and on August 6, 1901, qualified by filing bond.

5. On August 15, 1901, Avery, as trustee, brought the suit in equity referred to (Record, pp. 51-57).

6. The bills of sale referred to in the bill in equity are the same as those referred to in this action.

7. On September 18, 1901, Avery, as trustee, sold to William J. Corbett (the plaintiff) all the woolen machinery of the estate not covered by said bills of sale, which transaction included the machinery in controversy.

8. At the time of making this sale the trustee was almost wholly ignorant of the amount of machinery not covered by the bills of sale.

9. Subsequent to April 6, 1885, the date of Connor's second sale to this defendant, and up to June 18, 1901, Connor purchased and installed in the two mills from time to time certain machines, parts of machines, and other manufacturing implements besides the twenty Knowles broad looms referred to, and all of the property sued for in this action was property so added subsequent to April 6, 1885.

10. At the trial the following facts were agreed to in writing: That Avery's title was acquired as trustee; that all the

property mentioned in the declaration was from the date of Connor's adjudication in bankruptcy to the date of the dismissal of the equity suit located in the buildings and rooms therein specified in the declaration, and none of it was included in the exceptions set out in paragraph three of the bill of complaint; that such title as the plaintiff had "was acquired by virtue of a sale September 18, 1901, by said Avery, as trustee, of all the machinery of the bankrupt estate not covered by the bills of sale given by Connor to Craven, the defendant, October 12, 1883, April 6, 1885, and March 10, 1891" (Record, pp. 47-50).

On May 6, 1907, the plaintiff amended his declaration by specially setting up and claiming that his title was acquired under an authority exercised under the United States within the meaning of section 709 of the Revised Statutes of the United States (Record, pp. 58, 59). On May 6, 1907, the plaintiff also filed a replication in which he specially set up and claimed the same title in substantially the same allegations (Record, p. 59).

At the second trial the following additional material facts were in evidence:

1. In 1882 James Connor purchased from Henry Hilton, of New York city, all the mill machinery and all the personal property connected with it in the building known as the New York mill (Record, p. 63).

2. James Connor was duly adjudicated a bankrupt by the District Court of the United States for the District of Massachusetts, June 18, 1901. Nathan P. Avery was duly appointed trustee in bankruptcy of the estate of said Connor August 3, 1901, duly filed bond, and duly qualified as such trustee August 6, 1901, and was duly authorized by said district court to make sale of the property involved in this action (Record, pp. 65, 66).

3. The following findings of the auditor were introduced in evidence:

"I find from the record as evidence and from the testimony of Avery, trustee, that the title to all the machinery in the

New York mill was not actually litigated in that suit; but that the question actually investigated and tried related to the validity and nature of the sales, Connor to Craven, 1883, 1885, and 1891, which are the sales hereinbefore set out; that the validity of these sales was established by the adjudication in that suit and that as to the property acquired by Connor after April 6, 1885, and set forth in this action in plaintiff's declaration, the judgment in the former action does not affect the title or bar the plaintiff's right to recover for its value" (Record, p. 66).

After the plaintiff put in evidence the report of the auditor who found for him, the defendant offered in evidence the record in the equity suit referred to. The plaintiff objected to the admission of the record. The court admitted it, and the plaintiff excepted. *The defendant offered no further evidence.*

The plaintiff offered certain evidence which was rejected. The plaintiff not now urging the error which he assigned to the rejection, the evidence is immaterial (Record, pp. 67, 68). But the court ruled that, even if the facts offered were proved, the record was a bar to the plaintiff's right to recover and directed a verdict for the defendant (Record, p. 68). The jury, in compliance with this order, found for the defendant (Record, p. 62). The plaintiff excepted to this ruling and direction, and his bill of exceptions was allowed (Record, p. 68). On October 15, 1907, the exceptions were overruled, and on November 4, 1907, it was ordered by the court that the defendant recover judgment against the plaintiff for his costs. Such entry having been made, the plaintiff brought his petition to this court.

Specification of Errors.

Of the errors assigned (Record, p. 71) the following are specified:

1. Said superior court erred in directing the jury to find a verdict for the defendant (Second Bill of Exceptions, Record, p. 68).

2. Said superior court erred in admitting in evidence the record in the equity suit of Avery, trustee, *v.* Craven, set forth in the bill of exceptions.

(The record in the equity suit referred to is made up of a bill brought by Nathan P. Avery, trustee of the estate of James Connor, bankrupt, against Michael Craven, the defendant, entitled "Bill to set aside conveyance" (Record, pp. 51, 52, 53), the answer of the defendant (Record, pp. 53, 54), the plaintiff's replication (Record, p. 54), the appointment of a special master to hear the parties and examine their vouchers and evidence, and to report so much of the evidence as is necessary to determine any question of law, and to make report of the facts thereof to the court as soon as may be (Record, p. 54), the report of the special master (Record, pp. 54, 55, 56, 57), and the order by the court that the bill be dismissed with costs (Record, p. 57). In the third paragraph of his bill the trustee alleged upon information and belief that the bankrupt owned and had located in certain buildings "all the machinery, tools and manufacturing implements located therein," with certain exceptions not material to the issues here, "all of which machinery is claimed to be owned by Michael Craven." In the fourth paragraph he alleged "that the entire purchase price of *all* of the above described personal property was paid by the said James Connor under a certain bill of sale of Henry Hilton to said James Connor, dated February 24, 1882, * * * and that the title was then taken in the name of James Connor, but that in the years of 1881 (1883?), 1885, and 1891 Michael Craven claims that the property was conveyed to him on the payment of certain amounts." In the following paragraph the trustee charges that the defendant did not make the purchase of any of the personal property above mentioned, and that the alleged purchases by the defendant were in effect an attempt to mortgage the property. He prayed, among other things, that the defendant be required to answer and set forth the facts and circumstances attending

the attempted transfer to him, and that "the title of all of the said personal property used or in any manner connected with the building above mentioned" and "all of the personal property of every name and nature" might be decreed to be the property of the bankrupt (Record, p. 52). In his answer the defendant admitted, among other things, that he claimed to be the owner of certain machinery, tools, and manufacturing implements located in the New York mills, and so forth, and that he became the owner thereof by purchase from said James Connor in the years 1883, 1885, and 1891; he admitted the allegations in the fourth paragraph of the bill, excepting as otherwise stated by him in his answer to the third paragraph and excepting the allegations relating to the purchase price paid by Connor, the bill of sale and the record thereof. The plaintiff quotes the entire record in the equity suit by reference to pages 51-57 of the record in this case.)

3. Said superior court erred in ruling and deciding that the record of said equity suit was a bar to the plaintiff's right to recover.

(The court ruled that even if the facts offered were proved, the record was a bar to the plaintiff's right to recover, and directed a verdict for the defendant—Bill of Exceptions Record, p. 68).

4. Said superior court erred in ruling and deciding against the title acquired by purchase by the plaintiff from Avery, trustee in bankruptcy.

5. Said superior court erred in ruling and deciding that the final decree in the equity suit of Avery, trustee, *v.* Craven was an adjudication of title in the defendant to the property involved in this action, to which property the plaintiff claimed title by virtue of purchase duly made by him from said Avery, duly acting as trustee in bankruptcy.

6. Said superior court erred in ruling and deciding that the plaintiff did not acquire title as against the defendant by virtue of his said purchase from said Avery acting as trustee as aforesaid.

ARGUMENT.

I.

Effect of the State Court's Decision.

Upon both the question of the jurisdiction of this court and the merits of the case, the effect of the State court's decision upon the property rights of all the parties has an important bearing. The decision results, among other consequences, in—

1. Subjecting the purchaser to the loss of the money paid to the trustee, or to the burden of bringing an action of doubtful utility against him.

2. Passing title to a man who did not pay a dollar for the property, who in the equity suit carefully avoided making any claim of ownership in it, and whose contentions, made for the first time at the trial of this case, that the property became his either by virtue of an obligation on the part of Connor to "keep the depreciation good" of the machinery included in the bills of sale or of a gift by Connor at each of the different times when the machinery in controversy here was added (Record, pp. 59, 60; 18, 19, 25-35) were rejected by both auditor and jury.

3. Depriving the trustee of title to all personal property of every name and nature, at least in the buildings, whether it be machinery, raw material, or finished product, if it be held that the prayer in the equity suit that title to "all of the said personal property used or in any manner

connected with the building * * * and all of the personal property of every name and nature" be decreed in the complainant so enlarged the scope of the issues as to make them inclusive of the title to the property in this case, and if that ruling be logically applied to "all of the personal property of every name and nature."

In other words, the defendant denied in paragraphs two and five of his answer to the bill that he claimed to be the owner of any property except what he acquired by purchase from Connor in 1883, 1885, and 1891 (Record, pp. 53, 54). The only question actually litigated and determined in the equity suit was the validity of those purchases. Yet he is given title to property not acquired through them by the State court's decision, which is necessarily a denial of the title acquired by the trustee by the bankruptcy proceedings and of the title acquired through him by the plaintiff.

II.

The Supreme Court of the United States Has Jurisdiction.

The plaintiff specially set up and claimed that his title was acquired under an authority exercised under the United States, within the meaning of section 709 of the Revised Statutes of the United States (Record, pp. 58, 59, 60, 61, 66, 67).

The following language from the Bankruptcy Act, United States Statutes at Large, volume 30, chapter 541, section 70, may be usefully quoted at this point:

"The trustee * * * shall * * * be vested with the title of the bankrupt, as of the date he was adjudged a bankrupt, except," etc.

"Real and personal property shall, when practicable, be sold subject to the approval of the court."

"The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee."

"The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a *bona fide* holder for value prior to the date of the adjudication." * * *

Upon this question of jurisdiction it should be borne in mind that the plaintiff does not seek to set aside the result of the equity suit so far as it relates to the property covered by the bills of sale. Although as the bankruptcy law then stood (section 23, Bankruptcy Act), the trustee was forced to resort to the State court, he abided by its decision, and the final decree is conclusive as to the property necessarily in issue. But the plaintiff contends that the property now in controversy was not, as a matter of law, involved in that suit; that the title remained in the trustee; that the final decree therein could not have affected the title to other property acquired by the trustee by operation of the bankruptcy law, and therefore that the State court's decision in this case that it did amounted to a denial of the trustee's right to pass title to the plaintiff.

There is no dispute that the trustee acquired title as of the date when Connor was adjudicated bankrupt, June 18, 1901.

It was agreed at the trial that the trustee was duly authorized by the Federal court to make sale of the property involved in this case (Second Bill of Exceptions, Record pp. 65, 66).

During the pendency of the equity suit, the trustee, on September 18, 1901, sold to the plaintiff all the woolen machinery not covered by the bills of sale (Second Bill of Exceptions, Record, p. 65).

The plaintiff's title was acquired by virtue of that sale (Second Bill of Exceptions, Record, p. 66). Having acquired title under a Federal authority, he sought to assert it in the only jurisdiction open to him, the State court.

In the light of these facts, that court's decision that the trustee's authorized sale to the plaintiff passed no title clearly presents a Federal question. Assuredly, if that court did not question the authority of the Federal court, it would not have decided against the title passed by it.

This case does not fall within the rule laid down in the cases where the only question adjudicated in the State court was whether the trustee had acquired any title at all and it was held, in the absence of a showing that the authority of the Federal court was denied, that the State court's determination of that question on principles of general law was not open to review here.

Scott *v.* Kelley, 22 How., 57.
Mays *v.* Fitton, 20 Wall., 414.
McHenry *v.* La Société Française, 95 U. S., 58.
Davis *v.* Friedlander, 104 U. S., 570, 575.
McKenna *v.* Simpson, 129 U. S., 506.
Cramer *v.* Wilson, 195 U. S., 408.

But in the case at bar the trustee admittedly acquired an absolute and clear title from the bankrupt. *The State court's rejection of his title rested, not on a condition existing at the time he acquired it, but on the construction by that court of his subsequent official performance of an authorized legal duty in seeking to recover in the only court open to him property which appeared to belong to the estate.* By section 23*b* of the Bankruptcy Act, before the amendment of 1903, he was prohibited from resorting to any other court, without the consent of the defendant.

Frank *v.* Vollkommer, 205 U. S., 521, 526.

While he abided by the final decree, and the title to the property necessarily involved in that suit must be held to be conclusively adjudicated against him and his privies, if the plaintiff's contention that the property he sues for was not

necessarily involved therein be sound, to hold that the State court's decision is not reviewable here amounts to an assertion of that court's power to extend its jurisdiction, exclusive and final, over a part of the bankrupt estate not litigated before it as the result of the trustee's suit there for relief concerning another part of the estate. Such a conclusion, the plaintiff thinks and earnestly argues, would be a dangerous limitation upon this court's supreme power of review of questions affecting Federal authority and in conflict with our national scheme of Federal and State jurisdiction.

The district court and the trustee when they made the sale to the plaintiff certainly did not concede that the title was put in jeopardy by the pending equity suit, and their act was performed in the exercise of a Federal authority. The ruling and decision of the State court were flatly against their authority.

In such a case this court has jurisdiction to examine and determine the questions raised and determined in the State court against the validity of the title.

This view is supported by a long line of decisions. Jurisdiction was taken by this court in the following cases:

Clements v. Berry, 11 How., 398, 408, where a marshal of the United States levied an execution upon certain property under a judgment in the Circuit Court, which was taken out of his custody by a writ of replevin issued by State court, and the latter court decided adversely to the claim of the marshal. The court said:

"The jurisdiction of the court is the first question to be considered. The plaintiff sets up a lien on certain personal property under a judgment rendered by the Circuit Court of the United States held for the Middle District of Tennessee The defendant asserts a lien under a deed of trust for the property from Charles F. Berry and the Supreme Court of Tennessee held that the lien of the deed was paramount to that of the judgment. This brings the case within the twenty-fifth section (of the Judiciary Act), as the decision was against the right asserted under the authority of the United States."

Buck v. Colbath, 3 Wall., 334, 340, where a marshal of the United States defended himself against a suit in the State court on the ground that the acts complained of were performed by him under a writ of attachment from the proper Federal court.

Sharp v. Doyle, 102 U. S., 686, 688, where a warrant was issued to a marshal of the United States to take possession of a bankrupt estate (thus putting him substantially in the position of the trustee here), and a purchaser from the bankrupt sued him in a State court for so doing, and the marshal set up a defense that such purchase was a fraud under the bankrupt law and passed no title and asserted a right to it under such law, the court saying:

"The defendant asserted a right to them under the laws of the United States, on the ground that the pretended purchase was a fraud upon the bankruptcy law and passed no title; that the ownership was by virtue of the bankruptcy proceedings in the assignee, and that the plaintiffs were not entitled to recover. The right so claimed was decided adversely to the defendant. The instruction was affirmed in the court of last resort and its soundness depends upon the authority conferred on him by this writ. The case is, therefore, a proper one for a writ of error from this court."

New Orleans, Spanish Fort and Lake R. R. Co. v. Delamore, 114 U. S., 501, 506, where the judgment of the State court was against the validity of a title acquired by a purchaser at a sale in bankruptcy. The court, after citing *Factors' Insurance Co. v. Murphy*, 111 U. S., 738, says that "this court has jurisdiction in error over a judgment in a suit in a State court *determining the effect to be given to a sale* of the property in controversy *by order of a district court in bankruptcy.*"

Williams v. Heard, 140 U. S., 529, 535, where the State court decided against the assignee's claim to the proceeds of an award by the Tribunal of Arbitration at Geneva as a part of the bankrupt estate, this court holding that *the question of his title was necessarily involved.*

Stanley v. Schwalby, 147 U. S., 508, 519, where officers of the United States, exercising a Federal authority *in holding possession of property*, were sued in an action of trespass to try the title.

Hussman v. Durham, 165 U. S., 144, 147, where this court says:

"As the Supreme Court of the State held that the equitable title apparently conveyed by the proceedings in the United States land office in 1858 was of no effect and the two titles based thereon of no validity, it is apparent that a right claimed under the authority of the United States was denied, and therefore this court has jurisdiction."

See also—

Aldrich *v.* Ætna Co., 8 Wall., 491, 495.
Dupassier *v.* Rochereau, 21 Wall., 130.
O'Brien *v.* [illegible]d, 92 U. S., 81.
Baldwin *v.* Stark, 107 U. S., 463.
Pittsburg, Cincinnati, etc., Railroad *v.* Long Island L. & T. Co., 172 U. S., 493.
Commercial Publishing Co. *v.* Beckwith, 188 U. S., 567.
Yates *v.* Jones National Bank, 206 U. S., 155, 167.

For a case where the court held that a Federal question was presented by a contention that due effect to a decree of a Federal court was denied by the action of the court below in sustaining a plea of *res adjudicata*, see—

National Foundry, etc., *v.* Oconto Water Supply Co., 183 U. S., 216.

This case is easily distinguished from *Avery v. Popper*, 179 U. S., 305. There the purchaser bought on execution sale from a Federal officer. A prior chattel mortgage covered the same property, or a part thereof. There was no question of the validity of the judgment or the regularity of the proceedings in the Federal court. The judgment debtor's

title in the property did pass to the purchaser. The question was with respect to the validity and priority of the existing mortgage, and consequently whether the purchaser bought subject to it, and this court held that the question was for the State court to settle according to the law of the State. In the case at bar the effect of the State court's decision was that the trustee had no title at all to transfer.

Moreover, the property involved here never left the constructive possession of the district court, and the trustee at no time parted with his title or put it in issue, unless it be held that it was necessarily involved in the equity suit. Whether it was or was not, the plaintiff says, is a Federal question.

III.

The Final Decree is Not a Bar to the Plaintiff's Right to Recover.

The plaintiff does not contend for a relaxation of the rigid rule laid down in numerous decisions that a former judgment on the merits is a conclusive bar in a subsequent suit between the same parties relating to the same cause of action as to all matters which were litigated, or might have been litigated to sustain or resist the demand in the first case.

Cromwell *v.* Sac County, 94 U. S., 351.
Davis *v.* Brown, 94 U. S., 423, 428.
Southern Pacific Railroad *v.* United States, 168 U. S., 1, 48.
Waterhouse *v.* Levine, 182 Mass., 407.
Butrick, Petitioner, 185 Mass., 107, 113.
Corbett *v.* Craven, 193 Mass., 30, 35.

But the meaning of the words "matters which might have been litigated" does not include everything not litigated, but which might have been through the listlessness of opposing

counsel and the indulgence of the court. The matters relied upon must have been necessarily involved in the former suit.

The Haytian Republic, 154 U. S., 118, 129.
Watts *v.* Watts, 160 Mass., 464, and cases cited.
Cobb *v.* Fogg, 166 Mass., 466, 477.

The plaintiff's argument that the ruling of the superior court was erroneous rests on his contentions that in the equity suit the title to the property in controversy here was not actually litigated, and was not necessarily involved, so that it might have been litigated.

The first is easily proved by reference to the auditor's finding to the contrary (Second Bill of Exceptions, Record, p. 66), the report of the special master in the equity suit (Record, pp. 54-57), and the entire absence of evidence upon the subject from the defendant. In making his second contention the plaintiff is compelled to take issue (which he does in all respect to the distinguished jurist who wrote it) with the concluding paragraph of the Supreme Judicial Court's opinion in the case. Chief Justice Knowlton said:

"The language of the bill is *plainly inclusive of it* (the property sued for here), and there is nothing in the answer that limits the issue tendered by the plaintiff in the statement of his claim and of the defendant's adverse claim" (Record, pp. 74, 75).

Neither conclusion, the plaintiff argues, even if it could be logically drawn from the premises of the opinion, was warranted by a correct analysis and a true construction of the whole record of the equity suit. [*Erratum:* Instead of the word "statement," where first used in that paragraph of the opinion, use the word "answer." See 193 Mass., 35.]

Dr. Lieber, in his Hermeneutics, defines interpretation as the art of finding the true sense of any form of words, that is, the sense which their author intended, and construction as the drawing of conclusions respecting subjects that lie be-

yond the direct expression of the text—conclusions which are in the spirit though not within the letter of the text.

And "the elementary rule is that for the purpose of ascertaining the subject-matter of a controversy and fixing the scope of the thing adjudged, the entire record, including the testimony offered in the suit, may be examined."

Washington Gas Light Co. *v.* District of Columbia, 161 U. S., 316, 329.

Cobb *v.* Fogg, 166 Mass., 477.

"The essential conditions under which the exception of the *res adjudicata* becomes applicable are the identity of the thing demanded, the identity of the cause of the demand and of the parties in the character in which they are litigants."

Packet Company *v.* Sickles, 24 How., 333, 341.

Matter in issue is "that matter upon which the plaintiff proceeds by his action and which the defendant controverts by his pleading."

King *v.* Chase, 15 N. H., 2, 9.

Whatever conclusions may be drawn from a cursory examination of the record, if we bring it within the range of careful observational investigation in the light of the foregoing considerations, it cannot be said as a matter of law that the bill, the answer, or the entire record, necessarily involves the property sued for in this action.

1. CORRECTLY CONSTRUED, THE LANGUAGE OF THE BILL TENDERED AS AN ISSUE ONLY THE TITLE TO THE PROPERTY COVERED BY THE BILLS OF SALE.

In the statement of his bill, brought nine days after his qualification in an effort to perform his official duty (Record, p. 49), the trustee alleged upon information and belief that the "bankrupt owns and has located" in certain buildings "all the machinery, etc., located in said mills and all the

machinery" in certain other buildings, with certain exceptions not material to this dispute, "all of which property is claimed to be owned by Michael Craven." If the description ended here, the plaintiff would cease to argue, so far as the effect of the bill itself is concerned. But in the succeeding paragraph, still stating his demand, the trustee further "represents that the entire purchase price *of all of the above described* personal property was paid by the said James Connor (his bankrupt) under a certain bill of sale from Henry Hilton to said James Connor dated February 24, 1882, * * * and that *the title was then taken* in the name of James Connor, but that later in the years 1881 (1883 ?) and 1885 and 1891 Michael Craven claims that the property was conveyed to him on the payment of certain amounts." In setting forth his grounds for equitable relief he "charges as true * * * that all of said property was *conveyed* and is now held by the said Michael Craven * * * to injure and defraud the creditors," etc., and "that * * * if any amount was paid by said Craven to said Connor, the same was in effect a loan, and that any attempt at a transfer was in effect an attempt to mortgage the said machinery, but, never having been recorded, is invalid" (Record, pp. 51, 52). In this particular description the trustee clothed the property in a certain, unmistakable and peculiar identity by showing both the origin of the bankrupt's title to "all of the above-described property" and the defendant's claim to it by purchase in certain years.

Inasmuch as the property before this court was *not* covered by the bills of sale, the plaintiff is unable to concede that the language of the bill in equity "is plainly inclusive" of it. The whole text of the statement of the demand, paragraphs as well as words, phrases, and sentences, must be examined in construing its meaning and fixing its scope. He argues that the rule ought to apply here; that words general in their meaning are restricted in their application by succeeding words of a limited import and descriptive or definitional of them. *The completed description points to but*

one class of property—that covered by the bills of sale. The ground relied upon for equitable relief gives root to one grievance only—the invalidity of the bills of sale. Upon what principle of construction can the word "all," apparently used inadvertently, drive from the whole bill these unerring guides to a limited meaning?

In a Massachusetts case the Supreme Judicial Court said:

"Estoppels of this description (by former judgment) are attended with qualifications which must be strictly observed. They are conclusive only as to the facts which are directly put in issue and determined in the former suit. If the pleadings present several distinct propositions of fact, the judgment is not conclusive upon any one of them, unless it appears from the record or *aliunde* that the issue upon which it was rendered was upon that proposition. It must appear that, upon the question of fact presented, the party has had a day in court, in which he either did or ought to have put it in issue."

Hooker *v.* Hubbard, 102 Mass., 239, 245.

It is of this, that his predecessor in title has had no day in court, that the plaintiff complains.

West *v.* Platt, 127 Mass., 367, 371.
Foye *v.* Patch, 132 Mass., 105, 111.
Watts *v.* Watts, 160 Mass., 464, 466.
Waterhouse *v.* Levine, 182 Mass., 407.

In an action of ejectment to recover land described in the complaint as half of a quarter section, the jury found the plaintiff entitled to one acre of said tract, but the verdict also defined the boundaries of said half. The judgment entered thereon read: "We, the jury, find for the plaintiff *for the lands embraced in the complaint,* containing about one acre," describing the same and following the verdict in the recital of the boundary line. There was nothing in the verdict or judgment to show that the plaintiff recovered to that

line. It was held that he was entitled to the possession of only one acre, and not the land embraced in the complaint.

Alexander *v.* Wheeler, 107 Ala., 471.

An attempt to construe general language in opinions of this court in preceding cases between the same parties as an estoppel was disposed of as follows: "The general statement at the close of the quotation from 146 U. S., 607," that the latter company has no title of any kind to these lands, "and the similar statement in paragraph 3 of the quotation from 168 U. S., section 61, are to be taken as applicable only to the facts presented and cannot be construed as announcing any determination as to matters and questions not appearing on the records."

Southern Pacific Railroad Co. *v.* United States, 183 U. S., 519, 533.

See also—

Pardee *v.* Aldridge, 189 U. S., 429.
Mack *v.* Levy, 60 Fed. (C. C.), 751.
Anderson, etc., *v.* Hopper, 90 Ind., 250.
Kennedy *v.* Scovil, 14 Conn., 61.
Felton *v.* Smith, 88 Ind., 149.
City of San José *v.* Uridias, 37 Cal., 339.
Stannard *v.* Hubbell, 123 N. Y., 520.
Blind *v.* Benbow, 11 Rich, Law (N. C.), 24.
Bridge *v.* Gray, 14 Pick., 55, 59.
Gage *v.* Holmes, 12 Gray, 428.

2. WHATEVER CONSTRUCTION BE PLACED ON THE BILL, THE ANSWER DISTINCTLY LIMITED THE ISSUE TO THE PROPERTY COVERED BY THE BILLS OF SALE.

Assuming, but not agreeing, that issue on the title to "all" the property in both the New York mills and the Bigelow Street mills was tendered by the trustee, it is plain that as

to the New York mills, at least, the defendant carefully refrained from joining issue. As to the Bigelow Street mills he admits that "he claims to be the owner of *all* the machinery" (with the exceptions already spoken of); but as to the New York mills, he admits only "that he claims to be the owner of *certain* machinery," etc. If "all" as to the Bigelow Street mills, why not "all" as to the others? These admissions are immediately connected with and characterized by an averment of his own title, of the origin of it, and of the manner and time of acquiring it in the following words: "And says he became the owner thereof by purchase from said James Connor in the years 1883, 1885, and 1891" (Record, p. 53). In other words, he claimed ownership by virtue of the purchases from Connor to all the property in the Bigelow Street mills and to only certain of the property in the New York mills. That he did not rely on any other source of title, and that he did not claim ownership to property not included in the bills of sale, is apparent in the report of the special master (Record, pp. 54-57). The defendant was in a position to object to evidence concerning any property outside of the bills of sale, upon the ground that he had confined his claim to ownership to them. If he could establish their validity, the trustee was not entitled to a decree against him. It is to be noted that—

"5. Excepting as the defendant has herein specially admitted the allegations contained in the plaintiff's bill, or pleaded ignorance thereof, he denies each and every material allegation therein contained" (Record, p. 54).

3. IF THE PLAINTIFF'S CONTENTIONS FAIL THUS FAR, NEVERTHELESS THE WHOLE RECORD IS SO UNCERTAIN ON ITS FACE AS TO PREVENT ITS OPERATION AS AN ESTOPPEL.

"In order to estop a party from proving a fact, because the fact had been found against him in a former suit, it must appear *clearly* that the precise question was adjudicated in

such suit. If the record relied on leaves this in doubt, there can be no estoppel."

Aiken *v.* Peck, 22 Vt., 255.

"When the (former) judgment is used in pleading as a technical estoppel, or is relied on by way of evidence as conclusive *per se*, it must appear by the record of the prior suit that the particular controversy sought to be concluded was necessarily tried and determined; that is, if the record of the former trial shows that the verdict could not have been rendered without deciding the particular matter, it will be conclusive as having settled that matter as to all future actions between the parties; and, further, in cases where the record itself does not show that the matter was necessarily and directly found by the jury, evidence *aliunde*, consistent with the record, may be received to prove the fact; but, even when it appeared from the extrinsic evidence that the matter was properly within the issue controverted in the former suit, if it be not shown that the verdict and judgment necessarily involved its consideration and determination, it will not be concluded."

Packet Co. *v.* Sickles, 5 Wall., 580.

In the case at bar not only was there not evidence *aliunde* of the fact relied on in the plea in bar, but the master's report and the auditor's finding show as a fact that the only issue actually litigated was the validity of the bills of sale.

"The record is not unlike a record in an action for money had and received to the plaintiff's use. It would be impossible to affirm from such a record *with certainty* for what moneys thus received the action was brought, without extrinsic evidence showing the fact, and, of course, without such evidence the verdict and judgment would conclude nothing, except as to the amount of indebtedness established. According to Coke, an estoppel must 'be *certain* to every intent, and *if upon the face of a record anything* is left to *conjecture as to what was necessarily involved and decided*, there is no estoppel in it when pleaded and nothing conclusive in it when offered in evidence.' * * * But to this operation of the judgment it must appear, either upon the face of the record or be shown by extrinsic evidence, that the precise question was raised and determined in the former

suit. *If there be any uncertainty on this head in the record, * * * the whole subject-matter of the action will be at large,* unless this uncertainty be removed by extrinsic evidence showing the precise point involved and determined."

Russell *v.* Place, 94 U. S., 606, 610.

And again:

"It is of the essence of estoppel by judgment that it is certain that the precise fact was determined by the former judgment."

De Sollar *v.* Hanscome, 158 U. S., 216, 221.

In *Waterhouse v. Levine,* 182 Mass., 407, 409, previously cited, Mr. Justice Barker concisely said:

"In the absence of proof that an issue actually was tried and determined in arriving at a former judgment, it is conclusive by way of estoppel only as to those facts which necessarily were involved and without proof of which it could not have been rendered."

See also—

Cromwell *v.* Sac County, 94 U. S., 351.
Davis *v.* Brown, 94 U. S., 423, 428.
Wilmington, etc., Railroad *v.* Alsbrook, 146 U. S., 279.
McCarthy *v.* Lehigh Valley R. R. Co., 160 U. S., 110, 120.

If the plaintiff's previous arguments on the scope of the bill and the joinder of issue must be rejected, he urges that on its face the entire record is so uncertain as to leave the judicial mind in doubt as to whether the title to the property sued for here was so put in issue in the equity suit that it was, or might have been litigated. It is not a controlling, but is a suggestive, fact that the auditor and first trial judge of the superior court were unable to find affirmatively.

4. BUT HOWEVER THE RECORD MAY BE CONSTRUED, UNDER A LATE DECISION OF THE SUPREME JUDICIAL COURT THE FINAL DECREE CANNOT OPERATE AS AN ESTOPPEL.

While the decision to be quoted does not modify the rule as to the conclusiveness of matters which might have been litigated in a former suit, it holds that it cannot in justice extend to cases where the question whether the disputed issue can be tried at all rests in the discretion of the trial tribunal; that, in an equity suit for specific performance of a contract to buy real estate, redress at law (assessment of damages) cannot be compelled by the plaintiff in a court of chancery, if for any reason his right to equitable relief is denied; that, where peculiar equitable relief is refused, the retention of jurisdiction to assess damages is wholly discretionary with the court, who may leave the plaintiff to pursue his remedy at law; and that a final decree dismissing the bill, based on a denial of purely equitable relief, is not a bar to a future action at law for damages for breach of the contract.

If the decision of the Supreme Judicial Court in the case at bar be sound, upon the record, and the findings and the state of facts, the trustee entered the equity court with two classes of property, one within the bills of sale and the other outside of them. He was admitted as to the former on the ground of equitable relief set forth in his bill, the fraudulent character or invalidity of the sales: as to the latter, by the discretionary right of the court to retain a bill properly before it to settle all controversies between the parties, legal and equitable, growing out of the demand. The court in finding the sales valid silenced his claim for equitable relief as to the property included in them, and was not required to hear him try his case at law as to the other property. He was denied the purely equitable relief for which he went into court, and was left to seek in the courts of law whatever remedy he might have. And this he has done.

Without further argument, and relying upon the reasoning in the opinion of the Supreme Judicial Court, delivered

by Mr. Justice Rugg, the plaintiff quotes from the case of *Inst. for Savings in Newburyport v. Puffer et al.*, decided February 25, 1909, and reported in the issue of March 30, 1909, of the *Northeastern Reporter*, volume 87, No. 5, page 569:

"The defense most relied upon is that of *res judicata*, grounded upon the fact that the plaintiff brought a suit in equity against this defendant praying for a specific performance of the contract, for the breach of which damages at law are now sought. In that suit after hearing, a decree was entered dismissing the bill. The reason for the dismissal is not stated in the decree itself or in any accompanying memorandum of the court, and does not appear of record. It was agreed that at the trial of the equity cause the defendant argued that the title of the plaintiff, even if good, was so involved in doubt that a decree for specific performance ought not to be ordered, citing in support of his contention Richmond *v.* Gray, 3 Allen, 27; Jeffries *v.* Jeffries, 117 Mass., at p. 187; Hunting *v.* Damon, 160 Mass., 441; Loring *v.* Whitney, 167 Mass., 550. These authorities abundantly sustain the proposition that specific performance of an agreement to purchase land will not be granted, if the title tendered is so doubtful that it may expose the purchaser to litigation as to its validity. The defendant now asserts that the sufficiency of the plaintiff's title was necessarily involved in the proceeding in equity, and contends that this point was decided adversely to the plaintiff by the decree dismissing the bill. He invokes the familiar principle that, as between the same parties, a judgment on the merits in an earlier suit is a bar, as to every issue that in fact was or in law might have been litigated, to a later suit upon the same cause of action (Corbett *v.* Craven, 193 Mass., 30; Cotter *v.* Boston & Northern St. Ry. Co., 190 Mass., 302, and cases cited; Northern Pacific Railway Co. *v.* Slaght, 205 U. S., 122). But in reason this rule can only be applied to the issues which might have been raised as matter of right by the parties thereto. It cannot in justice extend to cases where the question whether the disputed issue can be tried at all rests in the discretion of the trial tribunal. It becomes necessary, therefore, to determine whether, when, upon a suit in equity, purely equitable relief is denied on the ground that the de-

fendant has come to a position where he cannot comply with an equitable mandate or that the plaintiff's right although perhaps sounding in equity and well founded in law, turns out not to be of such character as to be entitled to equitable relief or that in the exercise of sound discretion it ought not to be granted or for any other reason, the plaintiff *ex debito justiciæ* may require a court of equity to retain jurisdiction for the purpose of assessing damages. If he can, he has had his day in court and is barred of an action at law. If he cannot, then he has not necessarily had an opportunity to try his case, and is entitled to such an opportunity. It has been held, under the early as well as later chancery practice in this Commonwealth, that where peculiar equitable relief is refused, jurisdiction might be retained by the equity court for the assessment of damages (Peabody *v.* Tarbell, 2 Cush., 226; Andrews *v.* Brown, 3 Cush., 130; Pingree *v.* Coffin, 12 Gray, 288-305; Att'y Gen. *v.* Deerfield River Bridge Props., 105 Mass., 1; Milkman *v.* Ordway, 106 Mass., 232, 257; Monson *v.* Fenno, 129 Mass., 405; Woodbury *v.* Marblehead Water Co., 145 Mass., 509; Brande *v.* Grace, 154 Mass., 210; Case *v.* Minot, 158 Mass., 577-589; Lexington Print Works *v.* Canton, 171 Mass., 414; United Shoe Machinery Co. *v.* Hold, 185 Mass., 97. See also New York City *v.* Pine, 185 U. S., 93-104). It was formerly held in England that in such case the court of chancery had no power to award damages, but this defect was cured by Lord Cairn's Act, 21 and 22 Vict., c. 27, s. 2 (Krehl *v.* Burrell, 7 Ch. D., 551; Sayers *v.* Collyer, 28 Ch. D., 551). Even in view of this statute it was held to be discretionary with the court whether to retain jurisdiction for this purpose or to dismiss the bill and leave the plaintiff to his remedy at law (Durrell *v.* Pritchard, L. R., 1 Ch. App. Cases, 244-252; Cooke *v.* Foebes, L. R., 5 Eq., 166-174; Avery *v.* Griffin, L. R., 6 Eq., 606). It has frequently been stated in respect of petitions for the removal of erections wrongfully placed on the land of the plaintiff that, if the act has been done innocently and the injury occasioned by removal would be greatly disproportionate to any gain to the plaintiff, the removal would not be ordered, but the plaintiff is left to his remedy at law (Lew *v.* Limes, 4 De G., J. and S., 286; Aynsley *v.* Glover, L. R., 18 Eq., 544; Hunter *v.* Carroll, 64 N. H., 572; Lynch *v.* Union Institution for Savings, 159 Mass., 306). The cause is sometimes retained in equity for assessment of damages on the

ground that there is no remedy then open at law (Jackson *v.* Stevenson, 156 Mass., 496-502). It has been the general practice of this court to retain jurisdiction of the cause in equity for the purpose of assessing damages, as appears from the cases above cited. (See also Starkie *v.* Richmond, 155 Mass., 188; Methodist Episcopal Soc'y in Charlton City *v.* Akers, 167 Mass., 560; Cobb *v.* Mass. Chemical Co., 179 Mass., 423; Rosenberg *v.* Heffernan, 197 Mass., 151). This is especially true where the plaintiff is himself without fault. But this is not the universal practice. Not infrequently instances have arisen where the court in chancery has declined to retain jurisdiction, but has left the plaintiff to seek such damages as he might be able to show by pursuing his remedy at law (Curran *v.* Holyoke Water Power Co., 116 Mass., 90; Thaxter *v.* Sprague, 159 Mass., 397; Harrington *v.* McCarthy, 169 Mass., 492-495; Banagan *v.* Malaney, 200 Mass.). The statutory authority is now ample to enable courts to permit by amendment the changing of a suit at equity into an action at law, but the allowance of such amendments is always discretionary, to which no exception lies, although it is rarely that the affirmative exercise of such discretion is refused (Merrill *v.* Beckwith, 168 Mass., 72; First National Bank *v.* Hall, 170 Mass., 526). Sometimes the plaintiff is given an election to proceed for his damages in equity or by an action at law, when equitable relief is denied (Levi *v.* Worcester Consolidated Street Railway Co., 193 Mass., 116). The inference from these cases is plain that a plaintiff praying for specific performance cannot compel the chancery court to retain jurisdiction of his cause solely for the purpose of assessing damages, when for any reason other than the infirmity of his claim both at law and in equity the peculiar equitable relief sought is denied. The plaintiff's situation at the time of filing its bill in equity was this: It had a valid contract with the defendant for the purchase of land: it believed its title to be unimpeachable; on its face this entitled it to relief in equity; it brought its bill accordingly; it had no reason to anticipate an adverse decision by the court upon the documents in its hands. There is no occasion for the application of the rule that it should have stated its cause of action in different forms, because the statement of its claim for relief in damages in a form good at law did not carry with it the right to have the legal aspects of the case passed upon by a court of equity. The defendant

relies upon Connihan *v.* Thompson, 111 Mass., 270, where, with reference to the contention that by commencing an action at law for breach of a contract the plaintiff had waived his remedy in equity, it was said: 'These are alternative remedies, but not inconsistent; and remedy in both forms might be sought in one and the same cause of action.' But it does not follow from this that redress at law in a case like the present can be compelled by a plaintiff in a court of chancery, if for any reason his right to equitable relief is denied. The title of the plaintiff was good. Hence the reasonable inference from the action of the superior court in dismissing the suit in equity is that it gave heed to the argument addressed to it by the defendant based upon Richmond *v.* Gray, 3 Allen, 27, and other like cases cited by him in argument. Without pausing to examine the correctness of this position, as it is not now before us, it is enough to say that under these circumstances it cannot be assumed as matter of law that the decree of dismissal was entered upon the merits and deny the plaintiff a remedy to which in some form it appears clearly entitled. Where, therefore, the equity suit might have been determined upon one ground, which would, and upon another, which would not, be a bar to the maintenance of this action, it is open to the plaintiff to show the precise ground upon which it went (Corbett *v.* Craven, 193 Mass., 30; Waterhouse *v.* Levine, 182 Mass., 407; McDonnell *v.* Langdon, 3 Gray, 513; Harlow *v.* Bartlett, 170 Mass., 584-591). The plaintiff should be permitted to try out its action at law, and to prove from whatever evidence may be available, including reasonable inferences, whether the decree in its equity suit was entered on the merits of the bill, or only because purely equitable relief was refused. The fact that the decree contains no reservation of right to sue at law is inconclusive. Although this is sometimes done, and may be necessary in certain cases, it is not essential in a case like the present (Scott *v.* Rayment, L. R., 7 Eq., 112)."

The plaintiff believes that he ought to have judgment upon his verdict, and to that end petitions that the case may be remanded.

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